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<p>2 claim that -- I mean, I wasn't really 3 familiar with this claim at all. 4 Q. I understand. 5 Mr. Hannah handed me today a copy 6 of your 2006 financial statement and I would 7 like to ask you about. I see that Mr. Hannah 8 has a copy. I understand you might have a 9 copy? 10 A. I have one in my bag. Need to be 11 careful of that. 12 (Exhibit 1034, document, marked for 13 identification, as of this date.) 14 Q. I would like to mark that copy, but 15 that means that I have to keep it after the 16 deposition today; is that all right? 17 A. Yeah, no problem. 18 Q. So I'm going to put a sticker on it 19 so we can keep track of it. That's 20 Exhibit 1034. 21 Is Exhibit 1034 a copy of Finjan's 22 consolidated financial statements for the 23 year ending December 31, 2006? 24 A. Yes. 25 Q. Do you believe that Exhibit 1034 is </p>	<p>2 an accurate statement? 3 MR. HANNAH: Objection to form. 4 A. What do you define by "accurate"? 5 Q. You are not aware of any errors or 6 omissions? 7 MR. HANNAH: Objection to form. 8 A. Not that I'm aware of. 9 Q. You expect when the auditors audit 10 it they did their job? 11 MR. HANNAH: Objection to form. 12 A. Yes. 13 Q. There is the note on inventory on 14 this statement, it's on page eight. 15 Do you see that? 16 A. Oh, yeah. I tell you I remember 17 something. 18 Q. Is that note G the one you were 19 referring to, to explain the basis for the 20 inventory? 21 A. Yes. 22 Q. Do you know if the inventory in 23 2006 is reported at cost or whether it's 24 reported at market? 25 A. The number that you see in the 2006 </p>
102	103
<p>2 report reflects the inventory value which is 3 derived from cost and market, so it's a 4 combination of both. 5 Q. Okay. Do you know if there is 6 somewhere backup or worksheet that reflects 7 how that inventory number was derived? 8 A. I know that there is some backup, I 9 don't know where it is. It's not something 10 that is -- it's not a backup that I saw. I 11 believe that there is something that backs up 12 the number. 13 MR. HOLDREITH: Mr. Hannah, because 14 we've had some trouble finding 15 accounting information in this case. 16 I'm going to ask you to ask Ernst & 17 Young and Finjan to preserve any work 18 papers, accounting work papers so that 19 if we want to look at the backup for 20 this stuff we have the best possible 21 chance of obtaining that information. 22 Q. Is it correct, Mr. Sofer, that as 23 of December 31, 2006 the company showed a net 24 loss of about \$12,898,000 for the year 2006? 25 MR. HANNAH: Objection to form. </p>	<p>2 A. You are referring to page four, 3 yes. 4 Q. Yes. I'm sorry, we spoke over each 5 other so I have to ask you again. 6 Is it correct that for the year 7 ended December 31, 2006 Finjan showed a net 8 loss of about \$12,898,000? 9 MR. HANNAH: Objection to form. 10 A. Yes. 11 Q. And again, in 2006 as in 2005, is 12 it correct that the selling and marketing was 13 the largest single expense for Finjan? 14 A. Yes. 15 Q. Do you know if the Malicious Code 16 Research Center costs are reflected on one of 17 these lines? 18 MR. HANNAH: Objection to form. 19 A. Again, when you are referring to 20 "Malicious Code Research Center" who are you 21 referring to? 22 Q. Are you familiar with a group 23 within Finjan called the Malicious Code 24 Research Center? 25 A. Yes. </p>
104	105

Pages 102 to 105

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<p>2 Q. Are the costs of that group 3 reported on one of these lines on the 2006 4 statement of operations? 5 A. Yes. 6 Q. Where are those costs? 7 A. I'm not sure, it could be either by 8 on the research and development line or in 9 the selling and marketing line. 10 Q. How would you go about finding out 11 where those Malicious Code Research Center 12 costs are? 13 A. You are asking specifically what, 14 where are they contained and which line item? 15 Q. Right. 16 A. I would need to refer to the 17 accounting and ask for a breakdown and see 18 what are the details of the salary costs and 19 look at the employee names and see where -- 20 their position. 21 Q. Okay. And that's information in 22 Finjan's accounting system that we've 23 discussed? 24 A. You will need to -- it's accounting 25 and the HR as well, because every employee</p> <p style="text-align: right;">106</p>	<p>2 should have a code and that derives which 3 line item in the accounting system it would 4 go, so could be either line. 5 Q. At the very end of this 2006 report 6 there's -- on the last page there's a 7 paragraph for subsequent events. Could you 8 turn to that, please. It's page 22 of 9 Exhibit 1034. 10 A. Um-hum. 11 Q. Do you have page 22 in front of 12 you? 13 A. Yes. 14 Q. Page 22 refers to a lawsuit filed 15 June 5, 2006 by the company for patent 16 infringement, that's this suit, right? 17 MR. HANNAH: Objection to form. 18 A. Can you repeat the question? 19 Q. Sure. Is the lawsuit that's 20 referred to on page 22 of the 2006 financial 21 report, is that this lawsuit that we're here 22 today to talk about? 23 MR. HANNAH: Objection to form. 24 A. Yes. 25 Q. And again, note B states "the</p> <p style="text-align: right;">107</p>
<p>2 company does not believe that this claim has 3 any merit, referring to Secure Computing's 4 patent infringement claim." 5 Do you see that? 6 A. Yes. 7 MR. HANNAH: Objection to form. 8 Q. And so would you agree with me that 9 Finjan is saying there just because Finjan 10 got sued doesn't mean in Finjan's opinion 11 that the claim has any merit? 12 MR. HANNAH: Objection to form. 13 A. Again, you need to repeat your 14 question. 15 Q. Sure. Isn't Finjan saying there 16 that even though we've been sued for patent 17 infringement that doesn't mean that the claim 18 has any merit? 19 MR. HANNAH: Objection to form. 20 A. I mean that's what the sentence 21 says. 22 Q. The next line says "the company 23 also does not believe that this legal claim 24 will have any impact on its financial 25 statements."</p> <p style="text-align: right;">108</p>	<p>2 Do you see that? 3 A. Yes. 4 Q. Do you know what the basis for that 5 statement is? 6 MR. HANNAH: Objection to form and 7 to the extent this calls for 8 attorney-client communication I'd 9 instruct you not to answer. If you can 10 answer otherwise, go ahead. 11 A. So can you repeat the question? 12 Q. Sure. Do you know what the basis 13 is for Finjan's belief that 14 Secure Computing's claim will not have any 15 impact on its financial statements? 16 MR. HANNAH: Again I'll repeat my 17 objection to form and with my 18 instruction. 19 A. Okay. So I specifically wasn't 20 aware of any discussions that were, but I 21 know that this statement is based on 22 discussions that were with employees of the 23 company. 24 Q. With attorneys. Do you know if 25 Finjan believes that the lawsuit will have no</p> <p style="text-align: right;">109</p>

Pages 106 to 109

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<p>2 impact because Finjan expects to win?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 Q. Or do you know whether Finjan</p> <p>5 believes even if it loses the claim the claim</p> <p>6 will not have an impact on the financial</p> <p>7 statement?</p> <p>8 MR. HANNAH: Excuse me. Objection</p> <p>9 and I'll remind you of my instruction,</p> <p>10 answer otherwise.</p> <p>11 A. So I don't know on what was or on</p> <p>12 which one of your attributes was this</p> <p>13 sentence depending on.</p> <p>14 MR. HOLDREITH: Let's take our</p> <p>15 lunch break.</p> <p>16 MR. VIDEOGRAPHER: 11:51. Off the</p> <p>17 record. End of tape one.</p> <p>18 AFTERNOON SESSION</p> <p>19 (Time noted: 1:14 p.m.)</p> <p>20 E Z R A S O F E R, resumed and testified as</p> <p>21 follows:</p> <p>22 EXAMINATION BY (Cont'd.)</p> <p>23 MR. HOLDREITH:</p> <p>24 (Exhibits 1035 through 1042,</p> <p>25 documents, marked for identification, as</p> <p style="text-align: right;">110</p>	<p>2 of this date.)</p> <p>3 MR. VIDEOGRAPHER: It's 1:14 on the</p> <p>4 record. Beginning of tape two.</p> <p>5 Q. Mr. Sofer, while we were off the</p> <p>6 record I marked some consolidated financial</p> <p>7 statement copies and one other document. I'm</p> <p>8 going to go through them one by one just to</p> <p>9 verify that's what they are. First exhibit</p> <p>10 is 1035. It's the consolidated financial</p> <p>11 statements for Finjan Software, Inc. as of</p> <p>12 December 31, 2004.</p> <p>13 Is that a copy of an audited</p> <p>14 financial statement for Finjan on a</p> <p>15 consolidated basis?</p> <p>16 A. The best of my knowledge it is.</p> <p>17 Q. Exhibit 1036 is a Finjan Software,</p> <p>18 Inc. consolidated financial statement as of</p> <p>19 December 31, 2003.</p> <p>20 Is that a copy of an audited</p> <p>21 financial statement for Finjan on a</p> <p>22 consolidated basis?</p> <p>23 A. To the best of my knowledge it is.</p> <p>24 Q. Exhibit 1037 is a copy of a</p> <p>25 document entitled Finjan Software, Inc.</p> <p style="text-align: right;">111</p>
<p>2 consolidated financial statements as of</p> <p>3 December 31, 2002.</p> <p>4 Is that a copy of an audited</p> <p>5 financial statement for Finjan on a</p> <p>6 consolidated basis?</p> <p>7 A. To the best of my knowledge it is.</p> <p>8 Q. My copy is missing pages three and</p> <p>9 four and yours is, as well I'm sure, it's an</p> <p>10 exact copy and although the Bates numbers are</p> <p>11 consecutive the pages seem to be missing.</p> <p>12 Before I just pointed that out did</p> <p>13 you know there were two pages missing from</p> <p>14 the 2002 statement?</p> <p>15 A. No.</p> <p>16 MR. HOLDREITH: Counsel, if that is</p> <p>17 a copying error I'd appreciate it if you</p> <p>18 could produce those two pages.</p> <p>19 MR. HANNAH: I will look into it.</p> <p>20 Q. Mr. Sofer, Exhibit 1038 is a copy a</p> <p>21 document with the title "Finjan Software</p> <p>22 Limited and its subsidiary consolidated</p> <p>23 financial statements as of December 31,</p> <p>24 2001."</p> <p>25 Is that a copy of an audited</p> <p style="text-align: right;">112</p>	<p>2 financial statement for Finjan on a</p> <p>3 consolidated basis?</p> <p>4 A. To the best of my knowledge it is.</p> <p>5 Q. Mr. Sofer, Exhibit 1039 is a copy</p> <p>6 of a document entitled "Finjan Software</p> <p>7 Limited consolidated financial statements as</p> <p>8 of December 31, 2000."</p> <p>9 Is that a copy of an audited</p> <p>10 financial statement for Finjan on a</p> <p>11 consolidated basis?</p> <p>12 A. The best of my knowledge it is.</p> <p>13 Q. Mr. Sofer, Exhibit 1040 is a copy</p> <p>14 of a document entitled Finjan Software</p> <p>15 Limited and subsidiary consolidated financial</p> <p>16 statements as of December 31, 1999.</p> <p>17 Is that a copy of a consolidated</p> <p>18 financial statement for Finjan?</p> <p>19 A. To the best of my knowledge it is.</p> <p>20 Q. Last one. Exhibit 1041 is a copy</p> <p>21 of a document entitled "Finjan Software</p> <p>22 Limited financial statement as of</p> <p>23 December 31, 1998."</p> <p>24 Is that a copy of a consolidated</p> <p>25 financial statement for Finjan?</p> <p style="text-align: right;">113</p>

Pages 110 to 113

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<p>2 A. To the best of my knowledge it is.</p> <p>3 Q. And that one is audited, as well?</p> <p>4 A. Yes.</p> <p>5 Q. Now, I also gave you a copy of</p> <p>6 Exhibit 1042. It's a two-page document</p> <p>7 numbered FIN 9002 and 03.</p> <p>8 Have you ever seen this before?</p> <p>9 A. No.</p> <p>10 Q. It says it's a Finjan Software,</p> <p>11 Inc, consolidated management report unaudited</p> <p>12 draft for discussion only."</p> <p>13 Have you ever seen a report like</p> <p>14 this?</p> <p>15 A. Yes.</p> <p>16 Q. What is the unaudited draft of a</p> <p>17 consolidated management report?</p> <p>18 A. This is a quarterly report that is</p> <p>19 issued for management purposes.</p> <p>20 Q. Who issues this report?</p> <p>21 A. The finance department.</p> <p>22 Q. Is there a person within the</p> <p>23 finance department who circulates it?</p> <p>24 A. Yes.</p> <p>25 Q. Who is that?</p> <p style="text-align: right;">114</p>	<p>2 A. The VP finance.</p> <p>3 Q. That's Mr. Kraitsman?</p> <p>4 A. Yes.</p> <p>5 Q. There's a note here on the first</p> <p>6 page, it says "note 1-D annual invoice to</p> <p>7 sales."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What does that refer to?</p> <p>11 A. If you remember I explained to you</p> <p>12 before that there is a difference between the</p> <p>13 audited reports and the management reports in</p> <p>14 terms of the GAAP revenues and for management</p> <p>15 reports. What we are referring to is</p> <p>16 actually the purchase orders that were</p> <p>17 invoiced within a certain period, so that's</p> <p>18 the numbers that are referred in this report.</p> <p>19 Q. Do you know if that is only a</p> <p>20 timing issue or does it result in differences</p> <p>21 in amounts to if you adjust for the timing?</p> <p>22 MR. HANNAH: Objection to form.</p> <p>23 A. You are referring to which period?</p> <p>24 Q. Well, here's what I'm wondering.</p> <p>25 Let me ask some basic questions and then</p> <p style="text-align: right;">115</p>
<p>2 we'll get to that.</p> <p>3 A. Okay.</p> <p>4 Q. Is this chart one where it is on</p> <p>5 two pages, but it reads across if you line up</p> <p>6 the two pages?</p> <p>7 A. Yes.</p> <p>8 Q. Feel free to pull the staple out,</p> <p>9 if you like, if that makes it easier to</p> <p>10 refer.</p> <p>11 A. No, that's okay, I can see the</p> <p>12 number.</p> <p>13 Q. There's a title over the left most</p> <p>14 column that says "sales by product."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Does that indicate that each of the</p> <p>18 line items below it is a line of sales broken</p> <p>19 out by product?</p> <p>20 MR. HANNAH: Objection to form.</p> <p>21 A. Yes.</p> <p>22 MR. HANNAH: Go ahead.</p> <p>23 A. I see here "sales by product," I</p> <p>24 don't know if these are all the products of</p> <p>25 Finjan.</p> <p style="text-align: right;">116</p>	<p>2 Q. Do you know if VSW/FSG stands for?</p> <p>3 A. No.</p> <p>4 Q. Do you know if that's probably</p> <p>5 Vital Security for Web/SurfinGate?</p> <p>6 MR. HANNAH: Objection to form.</p> <p>7 A. If you say that these are -- I mean</p> <p>8 the letters that you are saying are in line</p> <p>9 with what's written here, as I would say the</p> <p>10 abbreviation, but I'm not sure that that's</p> <p>11 the case.</p> <p>12 Q. Can you tell by looking at the</p> <p>13 numbers and from your knowledge of what these</p> <p>14 reports generally are, whether that is the</p> <p>15 line that reports sales of the Vital Security</p> <p>16 for web appliances and software?</p> <p>17 A. I cannot relay to the numbers that</p> <p>18 are per year to the time I was with Finjan,</p> <p>19 all these numbers are prior to that from the</p> <p>20 numbers I'm looking at the first half of 2006</p> <p>21 it seems these are the numbers, but as you</p> <p>22 see from the time I'm with Finjan there isn't</p> <p>23 a breakdown to line of products, but rather</p> <p>24 one line item.</p> <p>25 Q. Okay. So when you get a report</p> <p style="text-align: right;">117</p>

Pages 114 to 117

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<p>2 from Mr. Kraitsman are all of the sales 3 compressed into a single line? 4 A. As you see here it is broken down. 5 If you look at 2006 so you would see it's 6 broken down to one item this is Finjan 7 license or, you know, the subscription base 8 revenues and then there is, I think it is the 9 maintenance, yeah the maintenance invoice. 10 Do you see? 11 Q. Okay. So considering the first 12 half of 2006 that's the column that says 13 H1/2006; is that right? 14 A. Um-hum. 15 Q. Your answer is "yes"? 16 A. Again, yeah. I was referring to 17 that, yes. 18 Q. What happened, just so I 19 understand, what products are included in 20 that \$6,751,000? 21 MR. HANNAH: Objection to form. 22 A. When you say "what products," I 23 need you to elaborate on that. 24 Q. Is the \$6,751,000 an aggregate of 25 all appliances and software that Finjan</p> <p style="text-align: right;">118</p>	<p>2 invoiced in the first half of 2006? 3 A. Yes. 4 Q. As you sit here, do you know 5 whether the sales numbers for years, any of 6 the years shown on Exhibit 1042 are accurate? 7 MR. HANNAH: Objection to form. 8 A. Again, I need you to define what is 9 "accurate"? 10 Q. Do you know if this Exhibit 1042 11 reflects the sales that are shown on the 12 books of Finjan by year for the invoiced 13 amounts? 14 MR. HANNAH: Objection to form. 15 A. So again books of Finjan" you need 16 to define what is that. 17 Q. What I'm trying to get a sense of 18 is whether you have any knowledge of whether 19 the numbers on this page are correct? 20 A. So I'm saying "correct" is a 21 relative word because the question is what 22 are you measuring, so... 23 Q. Do you know the answer to that, 24 what they are measuring? 25 A. So I need to know what are you</p> <p style="text-align: right;">119</p>
<p>2 referring to by "correct." 3 Q. Do you know what any of the numbers 4 on Exhibit 1042 are measuring? 5 MR. HANNAH: Objection to form. 6 A. I think you asked that question, 7 but I'll say it again. What is measured here 8 is the invoice revenues that were issued in a 9 certain period and that's what is measured 10 here. 11 Q. Okay. Do you know if Exhibit 1042 12 is a correct statement of the invoiced 13 amounts in each period shown on Exhibit 1042? 14 A. No. 15 MR. HANNAH: Objection to form. 16 Q. As you sit here today can you tell 17 me for any year the amount of Finjan's sales 18 of appliances and software? 19 MR. HANNAH: Objection to form. 20 A. So I would ask you to repeat the 21 question. 22 Q. Sure. Can you tell me the amount 23 of Finjan's sales of appliances and software 24 in any year since the company began? 25 MR. HANNAH: Objection to form.</p> <p style="text-align: right;">120</p>	<p>2 A. The question is appliance and 3 software as one number? 4 Q. Yes. 5 A. And then the question would be what 6 "sales," what are you referring to as 7 "sales"? 8 Q. What I'm asking, Mr. Sofer, is if 9 you are able to tell me on any basis what the 10 sales of Finjan's appliances and 11 subscriptions have been for any year 1997 12 through 2006? 13 MR. HANNAH: Objection to form. 14 A. Okay. So you are referring to 15 appliance and subscription? 16 Q. Right. 17 A. With one number? 18 Q. Right. 19 A. And you are referring to invoice 20 sales? 21 Q. Sure. 22 A. Please repeat the question. 23 Q. Can you tell me what the invoice 24 sales of appliances and subscriptions 25 together has been for Finjan in the years</p> <p style="text-align: right;">121</p>

Pages 118 to 121

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<p>2 1997 through 2006?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 A. Are you referring to audited</p> <p>5 numbers or unaudited numbers?</p> <p>6 Q. I don't care. I am asking if you</p> <p>7 can give me any number?</p> <p>8 A. So I don't remember that on top of</p> <p>9 my head. If you want specific numbers you</p> <p>10 have that report here, which is an unaudited</p> <p>11 report but reflects the invoice sales that</p> <p>12 were during this period.</p> <p>13 Q. As you sit here today, is this</p> <p>14 Exhibit 1042 the best information you have of</p> <p>15 the amount of Finjan's sales in each year</p> <p>16 1997 through the first half of 2006?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. You will need to define what are</p> <p>19 "sales" again.</p> <p>20 Q. Well, Mr. Sofer, did Mr. Hannah</p> <p>21 explain to you that you were designated by</p> <p>22 Finjan to come here and testify about the</p> <p>23 company's sales?</p> <p>24 MR. HANNAH: This is calling -- I</p> <p>25 instruct you not to answer</p> <p style="text-align: right;">122</p>	<p>2 attorney-client communication. I object</p> <p>3 to the question, as well.</p> <p>4 MR. HOLDREITH: Well, it's the easy</p> <p>5 way or the hard way. Your guy wants to</p> <p>6 get out of here, so if you want to do it</p> <p>7 the hard way that is what we will do.</p> <p>8 (Exhibit 1043, document, marked for</p> <p>9 identification, as of this date.)</p> <p>10 Q. Mr. Sofer, Exhibit 1043 is a copy</p> <p>11 of Finjan's responses to a request that I</p> <p>12 made in writing for Finjan to appoint</p> <p>13 witnesses to testify about various topics.</p> <p>14 Finjan has asked you to testify about topic</p> <p>15 number ten, which you can see on page eleven</p> <p>16 of Exhibit 1043. Topic number ten says</p> <p>17 "past, current and projected sales revenues,</p> <p>18 gross profits and net profits generated from</p> <p>19 the Finjan security products from the date of</p> <p>20 first sale."</p> <p>21 Has any -- are you aware that</p> <p>22 you've been appointed to testify about that</p> <p>23 topic today?</p> <p>24 A. Can you repeat the question again?</p> <p>25 Q. Sure. Are you aware that you've</p> <p style="text-align: right;">123</p>
<p>2 been appointed to testify today about the</p> <p>3 past, current and projected sales, revenues,</p> <p>4 gross profits and net profits generated from</p> <p>5 the Finjan security products from the date of</p> <p>6 first sale?</p> <p>7 MR. HANNAH: I think we're getting</p> <p>8 into a tricky privileged question and I</p> <p>9 would like to take a break and I can</p> <p>10 communicate with my client and make sure</p> <p>11 that we can fully answer the question.</p> <p>12 MR. HOLDREITH: All right. I don't</p> <p>13 agree with you it's a tricky question,</p> <p>14 but I won't deny you your break.</p> <p>15 MR. VIDEOGRAPHER: It's 1:30. Off</p> <p>16 the record.</p> <p>17 (Off-the-record discussion held out</p> <p>18 of the room.)</p> <p>19 MR. VIDEOGRAPHER: It's 1:32. On</p> <p>20 the record.</p> <p>21 MR. HOLDREITH: Could you read back</p> <p>22 the last question, please.</p> <p>23 (Record read.)</p> <p>24 MR. HANNAH: Again, I would like to</p> <p>25 caution you that this is calling for a</p> <p style="text-align: right;">124</p>	<p>2 "yes" or "no" question and that -- a</p> <p>3 "yes" or "no" answer and that you do not</p> <p>4 disclose any communications that we had</p> <p>5 as those communications are privileged,</p> <p>6 but you can answer the question "yes" or</p> <p>7 "no."</p> <p>8 A. Yes, I am aware.</p> <p>9 Q. Okay. And did you prepare yourself</p> <p>10 today to be able to testify about past,</p> <p>11 current and projected sales, revenues, gross</p> <p>12 profits and net profits?</p> <p>13 MR. HANNAH: Again, I'd give you</p> <p>14 the same cautionary instruction.</p> <p>15 A. Yes.</p> <p>16 Q. Did you look at any documents?</p> <p>17 A. I looked at the audited financial</p> <p>18 reports of the company.</p> <p>19 Q. Those are the reports I've put in</p> <p>20 front of you?</p> <p>21 A. The reports that you put in front</p> <p>22 of me, except for Exhibit 1042.</p> <p>23 Q. Okay. Do those reports report what</p> <p>24 the past, current and projected sales,</p> <p>25 revenues, gross profits and net profits</p> <p style="text-align: right;">125</p>

Pages 122 to 125

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<p>2 generated from the Finjan security products</p> <p>3 are from the date of first sale?</p> <p>4 A. Again, you need to define what are</p> <p>5 the "revenues." If you are referring to the</p> <p>6 "revenues" as noted in the financial</p> <p>7 statements they are. The reason I'm saying</p> <p>8 that is because this is not a financial</p> <p>9 statement, it's different set of numbers.</p> <p>10 Q. I understand. And I understand</p> <p>11 that you make a distinction between revenues</p> <p>12 based on invoice and revenues that are</p> <p>13 prorated for financial purposes.</p> <p>14 A. Exactly.</p> <p>15 Q. I'll accept either number.</p> <p>16 Can you give me on either basis the</p> <p>17 sales of Finjan's security products in the</p> <p>18 years 1997 through 2006?</p> <p>19 A. Again, the numbers appearing on the</p> <p>20 financial reports and if you want us to go</p> <p>21 through it we can go through it, throughout</p> <p>22 the numbers. So if you would refer to page,</p> <p>23 I think that was four in Exhibit 1041, you</p> <p>24 have the revenues for '97 and '98.</p> <p>25 Would you like me to state them?</p> <p style="text-align: right;">126</p>	<p>2 Q. Sure. Let me make sure I</p> <p>3 understand your testimony. Go ahead.</p> <p>4 A. So --</p> <p>5 MR. HANNAH: Well is there a</p> <p>6 pending question?</p> <p>7 MR. HOLDREITH: Yeah.</p> <p>8 A. The revenues appear --</p> <p>9 MR. HANNAH: Object to the form of</p> <p>10 the question. Go ahead.</p> <p>11 A. So you have the revenues in each</p> <p>12 one of the years and you see the number of</p> <p>13 consolidated revenues that appear in 1997 was</p> <p>14 247,000 and 1998 it was 739,000. So it goes</p> <p>15 on.</p> <p>16 Q. So if I look at the line on the</p> <p>17 consolidated financial statements which is</p> <p>18 revenues for each of the financial</p> <p>19 statements, Exhibits 1034 through 1041 that</p> <p>20 will report to me Finjan's sales?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. I need you to repeat the question.</p> <p>23 Q. Sure. I'm going to ask</p> <p>24 specifically about the number you pointed out</p> <p>25 on page four of Exhibit 1041.</p> <p style="text-align: right;">127</p>
<p>2 Is that a statement of Finjan's</p> <p>3 sales in 1997 and 1998?</p> <p>4 MR. HANNAH: Objection to form.</p> <p>5 A. So that would be the statement of</p> <p>6 Finjan's recognized revenues in this time, so</p> <p>7 the invoiced revenues could be a totally</p> <p>8 different number depending on what was</p> <p>9 recognized.</p> <p>10 Q. Do any of the documents we have in</p> <p>11 front of us tell you what the invoice</p> <p>12 revenues were in any year?</p> <p>13 A. Yes.</p> <p>14 Q. Which ones?</p> <p>15 A. The exhibit that you presented to</p> <p>16 me, 1042.</p> <p>17 Q. All right. So if I want to know</p> <p>18 the invoiced revenues in the years 1997</p> <p>19 through the first half of 2006, I can look at</p> <p>20 and rely on Exhibit 1042?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. For invoiced revenues, yes. I</p> <p>23 would caveat it's an unaudited number.</p> <p>24 Q. What is the consequence of that?</p> <p>25 A. That I would say the auditors of</p> <p style="text-align: right;">128</p>	<p>2 the company did not review the accuracy of</p> <p>3 the number.</p> <p>4 Q. Did the numbers -- how often does</p> <p>5 it happen that the numbers change based on an</p> <p>6 audit?</p> <p>7 A. There could be a situation where</p> <p>8 for revenue recognition there would be a</p> <p>9 different set of numbers. There could be</p> <p>10 issues where we would issue an invoiced sale</p> <p>11 and the auditors would say that there isn't</p> <p>12 enough substantial event for that and kind</p> <p>13 of, you know, extended payment terms that we</p> <p>14 shouldn't have invoiced up front, etc., that</p> <p>15 would change the number.</p> <p>16 Q. Okay. But for Exhibit 1042 these</p> <p>17 are invoiced numbers rather than revenue</p> <p>18 recognition, right?</p> <p>19 A. Yes.</p> <p>20 Q. So the audit considerations you</p> <p>21 just mentioned should not change the invoice</p> <p>22 numbers, should they?</p> <p>23 MR. HANNAH: Objection to form.</p> <p>24 A. Again, if you look at this report</p> <p>25 as is, the numbers shouldn't have been</p> <p style="text-align: right;">129</p>

Pages 126 to 129

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<p>2 changed. If you look in the perspective of 3 time it could be that these numbers would be 4 different. 5 Q. You are referring to Exhibit 1042 6 in your answer just now? 7 A. Yeah. 8 Q. Is there any audited set of 9 invoiced sales that is similar to 10 Exhibit 1042, but that has been audited? 11 MR. HANNAH: Objection to form. 12 A. These are management reports that 13 are not audited at all. 14 Q. Do the auditors audit invoice 15 revenue as opposed to recognized revenue? 16 MR. HANNAH: Objection to form. 17 A. Again, I mean, when you say did the 18 auditors audit invoiced revenues, "invoiced 19 revenues" is internal management term of the 20 company so... 21 Q. Therefore, you don't ask your 22 auditors to audit the revenue invoice 23 annually; is that right? 24 A. No, we don't. 25 Q. So is it a fair statement that</p> <p style="text-align: right;">130</p>	<p>2 Exhibit 1042 is the best information that 3 Finjan has as to the amount invoiced in each 4 year 1997 through the first half of 2006? 5 MR. HANNAH: Objection to form. 6 A. So I would like you to repeat the 7 question, please. 8 Q. Sure. Is it correct that 9 Exhibit 1042 reports the best information 10 Finjan has as to the invoiced amounts for the 11 years 1997 through the first half of 2006? 12 MR. HANNAH: Objection to form. 13 A. Yes. 14 Q. Do you know what the reference to 15 the '194 Patent family is on Exhibit 1042 16 next to the designation VSW/FSG? 17 MR. HANNAH: Objection to form. 18 A. No. 19 Q. Have you ever heard anyone at 20 Finjan say that the Vital Security for Web 21 and SurfinGate appliances and software are 22 covered by the '194 Patent? 23 MR. HANNAH: Objection to form. 24 A. No. 25 Q. Do you know if Finjan considers the</p> <p style="text-align: right;">131</p>
<p>2 Vital Security appliances and software to be 3 covered by the '194 Patent? 4 MR. HANNAH: Objection to form. 5 A. I wasn't familiar with the term 6 "'194 Patent family," so I don't know if it 7 was included or not. 8 Q. Are you familiar with the Mirage 9 product? There's a reference in the fourth 10 line here to "Mirage" and in parenthesis it 11 says "Vital Security for documents"? 12 A. No. 13 Q. Have you heard of an appliance 14 called the Documents 1Box? 15 A. No. 16 (Exhibit 1045, document, marked for 17 identification, as of this date.) 18 Q. Mr. Sofer, Exhibit 1045 is a copy 19 of a two-page document entitled 20 "Documents 1Box." It's numbered for 21 identification FIN 3541 and 3542. 22 Have you ever seen this product? 23 A. No. 24 Q. Do you know what the sales of this 25 product have been in any year?</p> <p style="text-align: right;">132</p>	<p>2 MR. HANNAH: Objection to form. 3 A. Again, can you repeat the question. 4 Q. Sure. Do you know what the sales 5 of the Documents 1Box have been in any year? 6 MR. HANNAH: Objection to form. 7 A. No. 8 Q. Do you know if Finjan has records 9 of what its sales of the Documents 1Box have 10 been? 11 MR. HANNAH: Objection to form. 12 A. I'm trying to look if it's in the 13 report you just gave me. That's probably the 14 Mirage product that you were referring to, 15 but I don't know if that's the only line 16 item. 17 Q. What makes you say that is probably 18 the Mirage line? 19 MR. HANNAH: Objection to form. 20 A. The inference. The fact that you 21 referred to it before. 22 Q. I'm sorry? 23 A. The fact that you referred to it 24 before. 25 Q. Unfortunately I can't testify in</p> <p style="text-align: right;">133</p>

Pages 130 to 133

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<p>2 this case so I need to -- I need to find out 3 from you if I can. I will point out to you 4 that on Exhibit 1045 the description of the 5 Documents 1Box there is an identification of 6 Vital Security for documents, it's in the 7 right column of the first page in bold. 8 Do you see that? 9 A. Yes. 10 Q. Does that help you to know whether 11 or not the line item for Mirage which says in 12 parenthesis "Vital Security for documents," 13 on Exhibit 1042 reports sales of the 14 Documents 1Box? 15 A. Yes. 16 Q. Do you think it probably does 17 report sales of the Documents 1Box? 18 A. Yes. 19 Q. According to Exhibit 1042, have 20 Finjan's total sales of the Documents 1Box 21 life to date been about \$4,060,000? 22 MR. HANNAH: Objection to form. 23 A. So are you asking me if that's the 24 number? 25 Q. Yes.</p>	<p>2 A. So I would like you to repeat the 3 question. 4 Q. According to Exhibit 1042, have 5 Finjan's total sales of the Documents 1Box 6 life to date been about \$460,000? 7 MR. HANNAH: Objection to form. 8 A. According to the document 1042, 9 Finjan's invoiced sales year to date or year 10 to half one 2006 are \$460,000. 11 Q. Do you know if that's an accurate 12 number? 13 MR. HANNAH: Objection to form. 14 A. No. 15 Q. Do you know if that line that 16 \$460,000 includes the Documents 1Box 17 appliance and software subscriptions? 18 MR. HANNAH: Objection to form. 19 A. No. 20 Q. Do you know when the first sale of 21 any Finjan -- let me ask the broadest 22 possible question. 23 Do you know when the first sale of 24 any Finjan product was, first time Finjan 25 sold a product?</p>
134	135
<p>2 MR. HANNAH: Objection to form. 3 A. Finjan exists from 1996 as a 4 company. When was the exact time that 5 Finjan's product was sold I don't know. 6 Q. You don't know if there were sales 7 in '96, for example? 8 MR. HANNAH: Objection to form. 9 A. I can look in the audited reports. 10 I said that we might get this information 11 from the financial report, but since we have 12 the information from 1997, so I do not really 13 know if there were any sales within 1996, but 14 I could assume that they were, not 15 significant though. 16 Q. The date of the first sale is 17 important to me. 18 Do you know if there is any way to 19 determine the date on which Finjan first sold 20 the product? 21 MR. HANNAH: Objection to form. 22 A. I believe that there is a way we 23 can go to our archives and see that, but I 24 don't have it on top, on the top of my head. 25 (Exhibit 1044, document, marked for</p>	<p>2 identification, as of this date.) 3 Q. I'm going to hand you Exhibit 1044. 4 That is a copy of a letter from me to 5 Mr. Hannah and attachment is an e-mail from 6 me to Mr. Hannah. 7 Have you seen any part of 8 Exhibit 1044 before? 9 A. No. I didn't see that. 10 Q. As part of your preparation for 11 your deposition, did you do anything to 12 determine the amount of Finjan's sales by 13 product by month? 14 A. No. 15 Q. Mr. Sofer, do you, at Finjan, 16 allocate any of your costs by product? 17 A. As I said before, at Finjan we 18 don't issue reports by product line, perhaps 19 it was prior to my time, but we do not do 20 that, and we do not allocate the costs. 21 Q. Okay. What about for the 22 appliances, could you not allocate at least 23 the costs to a third-party for supplying the 24 appliance by product? 25 MR. HANNAH: Objection to form.</p>
136	137

Pages 134 to 137

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<p>2 A. So again you asked a question where 3 you said if we could allocate or not. 4 Q. Right. 5 A. I believe the information is there, 6 but we don't issue the reports because of the 7 size of the company. 8 Q. Okay. I understand. 9 Do you know if it is a different -- 10 let me back up and ask a more fundamental 11 question. 12 Do you know who you buy the 13 hardware from for the appliances? 14 A. Yes. 15 Q. Who is that? 16 A. We have two providers; one is a 17 Portwell, I don't remember exactly the name. 18 This is the provider of the Finjan boxes and 19 the second is IBM. 20 Q. What does IBM provide? 21 A. IBM provides the 8,000 appliance 22 which is the bigger box and the 5,000 is 23 provided by Portwell. 24 Q. Do you know if the 1,000 and 3,000 25 boxes are the same box as the 5,000, or is it</p> <p style="text-align: right;">138</p>	<p>2 a different box with a different price from 3 Portwell? 4 MR. HANNAH: Objection to form. 5 A. I'm not familiar between the 6 differences of the boxes, so I don't know the 7 answer. I believe it has different prices, 8 of course. 9 Q. Who pays the invoices to Portwell, 10 which Finjan company? 11 MR. HANNAH: Objection to form. 12 A. Finjan Limited. 13 MR. HANNAH: Give me a second. 14 A. Sorry. 15 Q. That's Finjan Limited of Israel 16 pays Portwell for the boxes? 17 A. Yes. 18 Q. Is IBM also paid by Finjan of 19 Israel? 20 A. Yes. 21 Q. Are there any intercompany 22 transfers between Finjan Limited and Finjan 23 U.S.A. when inventory is moved to San Jose? 24 MR. HANNAH: Objection to form. 25 A. I believe there are charges, I'm</p> <p style="text-align: right;">139</p>
<p>2 not familiar how it's calculated. 3 Q. Do you know if Finjan Limited of 4 Israel recognizes any revenue above its cost 5 when it transfers a product to Finjan U.S.A.? 6 MR. HANNAH: Objection to form. 7 A. So I would like you to repeat the 8 question. 9 Q. When Finjan Limited of Israel 10 transfers product into the inventory of 11 Finjan U.S.A., does that happen? 12 A. Yes. 13 Q. Does Finjan Limited of Israel 14 recognize revenue above Finjan Israel's cost 15 in that intercompany transfer? 16 MR. HANNAH: Objection to form. 17 A. I don't know. Sorry. 18 MR. HANNAH: It's okay. 19 Q. Do you have a labor cost for taking 20 the box from your vendor, from IBM or 21 Portwell, and for installing software and 22 preparing it for a Finjan device? 23 MR. HANNAH: Objection to form. 24 A. Are you referring to Finjan's labor 25 cost?</p> <p style="text-align: right;">140</p>	<p>2 Q. Right. 3 A. Or vendor's labor cost? 4 Q. Right. Let me be more precise 5 then. 6 So at Finjan you received a generic 7 box from a vendor; is that right? 8 A. Yes. 9 Q. At Finjan you then load that device 10 with software; is that right? 11 A. Yes. 12 Q. Do you have a labor cost for 13 loading the device with software? 14 MR. HANNAH: Objection to form. 15 A. We have in the operations 16 department personnel that are responsible for 17 taking care of that. And those personnel are 18 being paid salaries by Finjan, so by 19 definition there is a labor cost there. 20 Q. And which company recognizes that 21 labor cost? 22 MR. HANNAH: Objection to form. 23 A. So now, you go into the transfer 24 pricing between Finjan Israel and Finjan U.S. 25 Q. Okay.</p> <p style="text-align: right;">141</p>

Pages 138 to 141

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<p>2 A. This was -- I mean, Finjan did a 3 study was prior to me being with Finjan on 4 transfer pricing. It was reviewed by the 5 auditors, I believe there is a whole theory 6 behind what is charged there, theory how 7 should the transfer price be. 8 Q. In the first instance, disregarding 9 the transfer price, are the employees whose 10 salaries are paid for the work of loading the 11 box with software, are they paid by 12 Finjan Limited of Israel? 13 MR. HANNAH: Objection to form. 14 A. The employees that are loading the 15 software to the Finjan box, yes. 16 Q. Are there any support -- well, let 17 me back up. 18 Do you recognize any costs for 19 providing support to your customers? 20 MR. HANNAH: Objection to form. 21 A. I would like you to rephrase the 22 question. 23 Q. Okay. What part is unclear? 24 A. You are asking are we charging our 25 customers for support?</p> <p style="text-align: right;">142</p>	<p>2 Q. Not whether you recognize revenue 3 but whether you recognize internally a cost 4 for providing support to your customers? 5 Does Finjan have to pay some employees to do 6 that, for example? 7 A. Yes. 8 Q. Are there support employees who are 9 paid by Finjan Limited of Israel? 10 MR. HANNAH: Objection to form. 11 A. Yes. 12 Q. Are there also support employees 13 who are paid by Finjan, Inc. of the 14 United States? 15 A. Yes. 16 MR. HANNAH: Objection to form. 17 Give me a second, please. 18 (Off-the-record discussion held.) 19 Q. How do you determine which support 20 employees are assigned to support a customer, 21 whether they are support employees from the 22 U.S. company or support employees from 23 Finjan Limited of Israel? 24 MR. HANNAH: Objection to form. 25 A. I don't understand the question.</p> <p style="text-align: right;">143</p>
<p>2 Q. Okay. So if you have a given 3 customer -- 4 A. Yes. 5 Q. -- how is it decided which support 6 employees will support that customer? 7 MR. HANNAH: Objection to form. 8 A. Okay. So now you are going into an 9 operational question really, I could only 10 testify to the best of my knowledge, so I 11 apologize upfront. 12 The U.S. company has support people 13 and Israel has support people, usually the 14 first level of support is done with the 15 employees that are closer to the customer's 16 site, so that would be the U.S. employees. 17 And the second level of support where there 18 are issues that are more into complication or 19 issues that need reviewing of the code or any 20 changes that it goes back to the support 21 people in Israel. 22 MR. HOLDREITH: Let's take a 23 ten-minute break. 24 MR. VIDEOGRAPHER: It's 1:58. Off 25 the record.</p> <p style="text-align: right;">144</p>	<p>2 (Recess taken.) 3 MR. VIDEOGRAPHER: 2:12. On the 4 record. 5 Q. Mr. Sofer, do you know if -- I'll 6 ask a more fundamental question. 7 Mr. Sofer, do you know that Finjan 8 entered into agreements with Cisco and with 9 IBM in 1998? 10 MR. HANNAH: Objection to form. 11 A. I know that Cisco investment -- 12 invested in Finjan regarding agreements that 13 we have with Cisco and IBM. I am not 14 familiar with the details. 15 Q. Do you know if Finjan recognized 16 any revenue from relationships with Cisco and 17 IBM in 1998? 18 MR. HANNAH: Objection to form. 19 A. No. 20 MR. HOLDREITH: Counsel, I 21 understand that among the documents that 22 were produced to my office in 23 Minneapolis this morning are agreements 24 with Cisco and IBM. I don't have those 25 here, I'm trying to see if they can be</p> <p style="text-align: right;">145</p>

Pages 142 to 145

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<p>2 faxed to me. I don't know if I'm going 3 to get them or not. I wonder if you 4 have copies of those with you. 5 MR. HANNAH: I unfortunately don't 6 have them with me. 7 MR. HOLDREITH: I asked at lunch 8 that you inquire of getting copies of 9 budgets, were you able to do that? 10 MR. HANNAH: Unfortunately it was a 11 difficult task and we are not able to do 12 it at this time. 13 MR. HOLDREITH: I guess I'll put 14 you on notice, Counsel, it shouldn't be 15 a surprise that we are going to ask you 16 to reconvene the deposition at your 17 expense once you provide all these 18 documents. So if you can provide them 19 today, I'll ask about them today if I 20 can, if you can't I understand, but 21 we're going to ask you to make it good. 22 (Exhibit 1046, document, marked for 23 identification, as of this date.) 24 Q. Here is Exhibit 1046. Mr. Sofer, 25 this has been numbered for identification</p> <p style="text-align: right;">146</p>	<p>2 FIN 12994 and 995. 3 Do you know what that document is? 4 A. No. 5 Q. Have you ever seen a document like 6 this before at Finjan? 7 A. No. 8 Q. Do you recognize any of the item 9 numbers listed in the second column of 10 Exhibit 1046? 11 A. No. 12 Q. Do you know if Exhibit 1046 is a 13 document that reports sales of the 14 Internet 1Box and related products by Finjan? 15 MR. HANNAH: Objection to form. 16 A. Can you repeat the question? 17 Q. Yeah. Do you know whether 18 Exhibit 1046 is a document that reports sales 19 of the Internet 1Box and related products by 20 Finjan? 21 MR. HANNAH: Objection to form. 22 A. I see here some lines mention 23 Internet 1Box, so I believe it does, but I 24 don't know what are the other line items, so 25 I couldn't say that's the only thing that is</p> <p style="text-align: right;">147</p>
<p>2 in this report. 3 Q. Okay. I don't want to belabor this 4 because I realize you've told me you have not 5 seen this document. 6 Are you able to tell from your 7 knowledge of Finjan and its accounting 8 systems whether this is a report in U.S. 9 dollars? 10 A. It's not mentioned here but, you 11 know, it seems like U.S. dollars. I don't 12 know. 13 Q. Mr. Sofer, I realize I'm showing 14 you documents you may not have seen and may 15 not know anything about, this is my one 16 chance to ask about them of a witness who's 17 been designated to testify on this topic, so 18 I have to find out if you know about them. 19 (Exhibit 1047, document, marked for 20 identification, as of this date.) 21 Q. Exhibit 1047 is numbered FIN 12992. 22 Do you know what this document is? 23 A. You are asking if I saw it before? 24 Q. Do you know what it is? 25 A. No.</p> <p style="text-align: right;">148</p>	<p>2 Q. Have you seen reports like this 3 before at Finjan? 4 A. No. 5 Q. Does Finjan use a document that's 6 called a "credit note"? 7 A. I don't understand your question. 8 Q. There's a reference in lines 28 9 through 40 on Exhibit 1047 to something 10 called a "credit note." 11 Is that a document that Finjan 12 uses? 13 A. I can see that there are invoices 14 and credit notes, I believe that the "credit 15 note" is really a credit for invoices that 16 were issued. But I don't understand the 17 question, does Finjan use a document that is 18 credit note? 19 Q. Right. What I'm trying to 20 understand is, is a credit note something 21 that Finjan issues in the ordinary course of 22 its business? 23 MR. HANNAH: Objection to form. 24 Q. Let me ask the really simple 25 question.</p> <p style="text-align: right;">149</p>

Pages 146 to 149

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<p>2 Do you know what a "credit note"</p> <p>3 is?</p> <p>4 A. Yes.</p> <p>5 Q. What's a "credit note"?</p> <p>6 A. Once you invoice a customer, there</p> <p>7 is a dispute or disagreement or the appliance</p> <p>8 was returned or anything like that, so there</p> <p>9 is a credit note that is issued.</p> <p>10 Q. Okay. Is a credit note a document</p> <p>11 that reflects cancelling an invoice or</p> <p>12 returning money to a customer?</p> <p>13 A. Yes.</p> <p>14 (Exhibit 1048, document, marked for</p> <p>15 identification, as of this date.)</p> <p>16 Q. Mr. Sofer, Exhibit 1048 is a copy</p> <p>17 of a document entitled "Finjan board meeting</p> <p>18 Q-4, 1997." It's number for identification</p> <p>19 FIN 1550 through 1565.</p> <p>20 Have you ever seen this before?</p> <p>21 A. No.</p> <p>22 Q. Have you ever seen a presentation</p> <p>23 like this that presents financial highlights</p> <p>24 for the board?</p> <p>25 MR. HANNAH: Objection to form.</p> <p style="text-align: right;">150</p>	<p>2 A. I will need you to refine your</p> <p>3 question.</p> <p>4 Q. All right. I'll ask specific to</p> <p>5 Finjan.</p> <p>6 Have you ever seen Power Point</p> <p>7 slides of financial highlights that are</p> <p>8 presented to the board?</p> <p>9 A. Yes.</p> <p>10 Q. Does that happen on a quarterly</p> <p>11 basis?</p> <p>12 A. Yes.</p> <p>13 Q. Who prepares the financial</p> <p>14 highlights for the board?</p> <p>15 A. The financial department.</p> <p>16 Q. Are those distributed to the board</p> <p>17 somehow?</p> <p>18 A. Yes.</p> <p>19 Q. How are they distributed?</p> <p>20 A. On a Power Point presentation.</p> <p>21 Q. Are they transmitted electronically</p> <p>22 to board members?</p> <p>23 A. By e-mail.</p> <p>24 Q. Do you also receive a copy of the</p> <p>25 quarterly board meeting presentations by</p> <p style="text-align: right;">151</p>
<p>2 e-mail?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have copies of those in your</p> <p>5 e-mail now?</p> <p>6 A. Again, you need to refine the</p> <p>7 question because it's too broad. I don't</p> <p>8 have copy of the board meeting of ten years</p> <p>9 ago, of course.</p> <p>10 Q. Of course.</p> <p>11 A. I'm in the company from</p> <p>12 January 2007 and the financial presentations</p> <p>13 that were presented to the board from that</p> <p>14 time forward are, of course, within my</p> <p>15 e-mail.</p> <p>16 Q. All right. Do you have, do you</p> <p>17 have those on a laptop computer?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have that with you here</p> <p>20 today?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. What is contained generally</p> <p>23 in the Power Point presentations to the board</p> <p>24 in the financial highlights?</p> <p>25 A. What we contain --</p> <p style="text-align: right;">152</p>	<p>2 MR. HANNAH: Objection to form.</p> <p>3 You can go ahead.</p> <p>4 A. When we have the quarterly board</p> <p>5 meeting we presented to the board the</p> <p>6 financial status of the company as of the</p> <p>7 quarter, end of the quarter that was previous</p> <p>8 to this board meeting. So if you look, if</p> <p>9 there is a board meeting end of July, we</p> <p>10 would present the quarterly financial</p> <p>11 highlights for end of Q 22007.</p> <p>12 Now, the financial highlights</p> <p>13 contain the financial information of the</p> <p>14 company.</p> <p>15 Q. Is that a standard format for each</p> <p>16 meeting?</p> <p>17 MR. HANNAH: Objection to form.</p> <p>18 A. When you say "standard format,"</p> <p>19 what are you referring to?</p> <p>20 Q. Do you just update the numbers but</p> <p>21 present the same categories of data in the</p> <p>22 same form?</p> <p>23 A. Usually we have a standard form, it</p> <p>24 changes from quarter to quarter, but not</p> <p>25 significantly.</p> <p style="text-align: right;">153</p>

Pages 150 to 153

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2 **Q. Okay. What financial figures are**
3 **reported in the highlights to the board?**

4 MR. HANNAH: Objection to form.

5 A. The financial figures that are
6 reported to the board are profit and loss, P
7 and L, which are the GAAP reports and the
8 actual budget reports.

9 **Q. Do the actual budget include a**
10 **comparison of the budget for revenue?**

11 A. Yes.

12 **Q. Does it include a comparison of the**
13 **budget for costs?**

14 A. Yes.

15 **Q. Does it include a comparison of the**
16 **budget for some measure of profit?**

17 A. I mean, that's the derivative of
18 the revenues minus the costs.

19 **Q. Is that stated explicitly in the**
20 **report?**

21 A. Yes.

22 **Q. Does it include any other**
23 **comparisons to budget?**

24 A. It has --

25 MR. HANNAH: Objection to form.

154

2 A. -- yeah, it has a compare on to
3 budget of the items you said on a quarterly
4 basis and year to date.

5 **Q. And do you believe that Finjan has**
6 **maintained an archive of copies of these**
7 **presentations to the board prior to the date**
8 **you started?**

9 MR. HANNAH: Objection to form.

10 A. When you say "Finjan," you mean the
11 company?

12 **Q. Right.**

13 A. I cannot comment on that because
14 you are referring to information that is ten
15 years ago and for the quarterly reports from
16 the time I'm with Finjan I have it on my
17 laptop, two board meeting, Q-1 and Q-2.

18 **Q. Was the presentation to board**
19 **members an existing procedure before you**
20 **joined Finjan or at the time you joined**
21 **Finjan?**

22 MR. HANNAH: Objection to form.

23 A. A quarterly board meeting was
24 there, what was presented there I don't know.

25 **Q. Are there other things that are**

155

2 **presented at the quarterly board meetings**
3 **other than the financial highlights?**

4 A. Yes.

5 **Q. What are they?**

6 A. I don't remember from top of my
7 head all the subjects, but their overview of
8 the company, there is a quadrant where we did
9 a SWOT analysis, strength, weaknesses,
10 opportunities, threats, and there are updates
11 of the CEO. Product road map.

12 MR. HOLDREITH: Counsel, I think
13 there are a lot of documents, a lot of
14 information that has not been produced
15 to us that's relevant to the
16 depositions, responsive to our requests.
17 Certainly these board presentations,
18 current and archived, the budgets, the
19 cost data, sales data, information in
20 the accounting system detail, the
21 agreements that were just produced this
22 morning at my office in Minneapolis.

23 We're going to need to see that,
24 have time to prepare and take a
25 deposition on it and we're going to look

156

2 to you to pay the cost of that
3 deposition because we should have had
4 that data before now for this
5 deposition.

6 If you want to try to mitigate that
7 by going down to the business center
8 right now and print me out as much of
9 that as you can I'm willing to try to
10 look at it, examine on it today to the
11 extent it's available, without
12 prejudicing any rights if we need any
13 more time to prepare. So I'm going to
14 ask you to consider what you want to do
15 here, but I believe none of that has
16 been produced to us and it's certainly
17 responsive.

18 So if you want to take a minute to
19 consider what you want to do, I'm happy
20 to take a break for a little while, let
21 you print out as much of that data as
22 you can for me, cover as much as you
23 can. If you don't want to do that, you
24 know, we can discuss later what we think
25 our positions are, but I'm going to want

157

Pages 154 to 157

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<p>2 you to tell me on the record what you 3 want to do. 4 MR. HANNAH: Okay. 5 MR. HOLDREITH: Do you want to take 6 a break to consider that? 7 MR. HANNAH: Of course. But we're 8 not conceding all of this and believe 9 that our production that we've collected 10 so far has been adequate, but we will 11 look into this, and I'd like to take a 12 break right now. 13 MR. VIDEOGRAPHER: 2:28. Off the 14 record. 15 (Recess taken.) 16 MR. VIDEOGRAPHER: 2:42. On the 17 record. 18 MR. HANNAH: So, Counsel, we've had 19 a chance to confer and we're going to 20 look into the documents and get those to 21 you, work with you and get those to you 22 produced as soon as possible. We'd like 23 to note that we do have several 24 depositions upcoming, particularly in 25 Israel, and we believe that we will have</p> <p style="text-align: right;">158</p>	<p>2 people that will be able to testify 3 about those documents. 4 MR. HOLDREITH: Okay. 5 MR. HANNAH: And I would also like 6 to note that to the extent that we need 7 to designate another witness for 8 particular topics, that we can also look 9 into doing that, as well. 10 MR. HOLDREITH: We will certainly 11 work with you if we can solve our need 12 for information without disruption 13 that's all to the good, so I appreciate 14 that. 15 MR. HANNAH: Great. 16 Q. And we can get you to pole vaulting 17 today, and I'm sincere about that by the way, 18 I'm not messing with you. 19 Is the name Bill Lyons familiar to 20 you, Mr. Sofer, L-Y-O-N-S? 21 A. No. 22 Q. I'm sorry if you already answered 23 that question. 24 Did you participate in the 25 budgeting process this year?</p> <p style="text-align: right;">159</p>
<p>2 A. No. What I would say just to make 3 sure that I am understood, the budget was 4 prepared for 2007 was prepared before I came 5 on board. The budget has updates that 6 obviously I was part of so I don't want to be 7 misunderstood here. 8 Q. Let me ask you this question. 9 To the extent you have had any 10 involvement with the budget and I recognize 11 it may be limited, have you consulted 12 historic budgets to use as information for 13 doing the current budget? 14 MR. HANNAH: Objection to form. 15 A. I wasn't involved in the 16 preparation of 2007 budget. What I would say 17 that usually you compare to last year 18 performance so I believe that was done in 19 order to prepare the 2007 budget. What was 20 actually done I'm not familiar with. 21 Q. Okay. In any capacity since you've 22 been at Finjan, have you had any reason to 23 look at historic budgets for Finjan? 24 A. I would like you to define what is 25 "historic."</p> <p style="text-align: right;">160</p>	<p>2 Q. Sure. I'm particularly interested 3 in whether you know whether there were 4 budgets for years 2003, 2004 or 2005? 5 A. I don't know. 6 Q. Don't know. 7 (Exhibit 1049, document, marked for 8 identification, as of this date.) 9 Q. Mr. Sofer, Exhibit 1049 is entitled 10 "Finjan management matrix 1997 consolidated," 11 it's numbered FIN 1613. 12 Have you ever seen a document in 13 this form before? 14 A. Again, I would like you to rephrase 15 the question. 16 Q. Sure. Let me ask a more general 17 question. 18 Have you ever seen this document 19 before -- 20 A. No. 21 Q. -- Exhibit 1049? 22 A. This is ten years ago. 23 Q. Have you seen more recent documents 24 that use this same format at Finjan? 25 A. This is an Excel sheet, looks like</p> <p style="text-align: right;">161</p>

Pages 158 to 161

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<p>2 a format from an Excel sheet, and I am 3 looking at this format, I would say that 4 already line items that might not be exactly 5 the same in the format we used to, for 6 example, there's your column which H/C I 7 believe it refers to head count, which I'm 8 not familiar with such exact format. So if 9 you are asking exact format, no.</p> <p>10 Q. Do you use a management matrix at 11 Finjan today?</p> <p>12 A. What are you referring to as 13 "management matrix"?</p> <p>14 Q. Do you use a document entitled 15 "management matrix"?</p> <p>16 A. No.</p> <p>17 Q. Do you use a document that compares 18 by quarter projected actual and difference 19 for the line items shown here on 20 Exhibit 1049?</p> <p>21 A. Okay. So as I mentioned before 22 there are quarterly board presentations, and 23 we did, within this presentation there is the 24 actual to budget that is referring to the 25 current quarter.</p> <p style="text-align: right;">162</p>	<p>2 Q. Do you currently use about these 3 same line items in that comparison, or are 4 they different?</p> <p>5 A. I think most of the line items are 6 there.</p> <p>7 Q. And if I wanted copies of the 8 document that the quarterly reports that 9 include this information, what documents 10 would I ask for?</p> <p>11 A. Okay. So again, what we were 12 relying on was the audited financial reports 13 which reflect, you know, the official reports 14 of Finjan. On a quarterly basis what you 15 would see is a quarterly report that compares 16 actual to budget, which are not the GAAP 17 revenues because we don't budget on GAAP 18 revenues, you would see compared to Finjan 19 bookings and previously as it was called 20 invoice revenues as what you gave me. I'm 21 not sure it would be exactly in the same 22 columns format, but there would be a report 23 on a quarterly basis of actual to budget.</p> <p>24 Q. What's the name of that report? 25 A. I don't remember on top of my head,</p> <p style="text-align: right;">163</p>
<p>2 but that's a part of Power Point 3 presentation, probably it's written Finjan 4 management report actual versus budget for 5 the quarter ending so and so.</p> <p>6 Q. Is that part of a packet that's 7 distributed to board members?</p> <p>8 A. Yes.</p> <p>9 Q. Is there a name for that packet 10 that's distributed to board members, is it 11 like the quarterly board materials or 12 something like that.</p> <p>13 A. Yes, I believe it's Finjan board 14 presentation for, yes.</p> <p>15 Q. Okay.</p> <p>16 A. Then you have here an example 17 Finjan board meeting and the relevant 18 quarter.</p> <p>19 Q. The sample you are referring to is 20 Exhibit 1048?</p> <p>21 A. Yeah. I'm not sure it's exactly 22 the same name, but the same idea.</p> <p>23 Q. When I ask Mr. Hannah for it I want 24 to make sure I ask for the right thing, 25 that's why I'm asking. So I'm going to tell</p> <p style="text-align: right;">164</p>	<p>2 him to talk to you if he says he doesn't know 3 what it is.</p> <p>4 A. I think by now we know.</p> <p>5 Q. I apologize if I asked you this 6 before.</p> <p>7 Do you know if Finjan has ever had 8 a net profit in any year?</p> <p>9 MR. HANNAH: Objection to form.</p> <p>10 A. I don't know. Again, we could go 11 through these reports.</p> <p>12 Q. I'll spare you the trouble, I can 13 look through them, but if you wanted to find 14 out if Finjan had a net profit in any year 15 would you consult the audited financial 16 reports that we looked at today?</p> <p>17 A. I think these are the most reliable 18 source.</p> <p>19 Q. Okay. Would you also look to those 20 same audited financial reports for whether 21 Finjan has ever had a net operating profit?</p> <p>22 MR. HANNAH: Objection to form.</p> <p>23 A. Here I would like to understand 24 what you are referring to by "net operating 25 profit"?</p> <p style="text-align: right;">165</p>

Pages 162 to 165

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<p>2 Q. If you look at -- for example, 3 which what year do you have in front of you, 4 2006? 5 A. Yeah. 6 Q. Yeah. Are you looking at the 2006 7 report -- 8 A. Yes. 9 Q. -- Mr. Sofer, okay. 10 So in the 2006 report on page four 11 there is a line item called "operating loss." 12 Do you see that? 13 A. Yes. 14 Q. Is there a corresponding term 15 called "operating profit" if that number is 16 positive? 17 MR. HANNAH: Objection to form. 18 A. I believe it was a positive number 19 it would mention operating profit. 20 Q. And so was it when I said net, was 21 that the part of my question that was 22 confusing? 23 A. No. What I meant is that for 24 management purposes probably Finjan would be 25 viewed for operating calculation differently</p> <p style="text-align: right;">166</p>	<p>2 than the GAAP revenues. 3 Q. Okay. 4 A. Again, as I told you, there are 5 revenues that Finjan receives, receives 6 payment for, but for GAAP purposes are 7 presented prorated over three years and that 8 skews the comparison. So I just want to 9 bring to your attention you need to be 10 careful when you are looking at the board 11 reports you will not be able to reconcile it 12 back to the audited report. 13 Q. I understand. 14 Generally is, it the case that your 15 revenues will be higher in any given year if 16 you are reporting on an invoice basis or is 17 that not correct? 18 A. A correlation. 19 MR. HANNAH: Objection to form. 20 A. What I would say and I did not 21 really compare year to year, but if you are 22 on a growth slope where you have more orders 23 that are prorated over years you will be in a 24 situation where the management reports where 25 we provide booking or invoice sales would be</p> <p style="text-align: right;">167</p>
<p>2 higher than the amounts that are on the 3 financial reports. 4 Q. Right. So when you are evaluating 5 the financial health of Finjan, is there a 6 number or set of numbers you look at to 7 determine the financial health of the 8 company? 9 MR. HANNAH: Objection to form. 10 A. Again, what are you referring by 11 "financial health," because there are lines 12 of -- 13 Q. I'm trying it figure out when you 14 as CFO are looking at the numbers and trying 15 to decide are we accomplishing what we want 16 to accomplish here, are you more likely to 17 look at invoice revenue or are you more 18 likely to look at the prorated revenue? 19 MR. HANNAH: Objection to form. 20 A. Okay. So now you are going into a 21 whole debate. If we will open parenthesis, 22 when I came to the company there was or when 23 I looked at the reports so there was the GAAP 24 reports which actually reflect what is the 25 recurring monthly revenue or on a monthly</p> <p style="text-align: right;">168</p>	<p>2 basis that is accumulated that Finjan 3 recognizes on subscription basis, and there 4 are the management report that shows the 5 total booking of the company. Now, if you 6 look at that there is a big question what is 7 more important, the booking revenues or the 8 ability of the company to generate revenues 9 on a steady basis ongoing. I was reading 10 some articles about it. And there's, at 11 least in my philosophy, if you look at the 12 company where you are able to see what is the 13 monthly recurring revenues that are generated 14 by the company it could reflect a much 15 healthier position of the company. With 16 Finjan because we budget on a booking level, 17 not on a monthly prorated we also get paid 18 usually up front for the total three years, 19 so the booking revenues are measured more as 20 a success of the company. I think that if 21 the company could show stability and growth 22 on a monthly basis of the install base and it 23 goes along and I could provide it, you know, 24 to show what is the growth that could be a 25 much more meaningful information and it</p> <p style="text-align: right;">169</p>

Pages 166 to 169

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<p>2 prevents the fluctuations because when you 3 look at the quarterly basis it could be that 4 there was a purchase order that goes in a 5 certain quarter or pushed to another quarter, 6 and then you show a very bad quarter. 7 If you look at it on a prorated 8 basis, on a monthly basis you would see that 9 if a PO was pushed by a month it doesn't 10 change the situation -- was pushed from one 11 quarter to the other it wouldn't create that 12 fluctuation if you look at that on the GAAP 13 reports. So again, your question is it could 14 be both ways. 15 Q. Depends, okay. 16 So is it fair to say in general 17 that invoice numbers can show a larger number 18 at a point in time, but they are more subject 19 to dramatic fluctuations? 20 MR. HANNAH: Objection to form. 21 A. I agree with your statement, yes. 22 Q. Is it also fair to say that 23 prorated numbers can give a picture over time 24 but it's harder to compare them to costs 25 because you can't prorate all your costs the 170 </p>	<p>2 same way? 3 MR. HANNAH: Objection to form. 4 A. Again, if you are looking at the 5 revenues so you get some kind of smoothly, 6 now if you remember when we discussed the 7 2006 or it was the 2005 report you asked me 8 about the deferred costs, so we do defer the 9 cost. And you are right that since there are 10 salaries and limits that we do not provide so 11 the cost of sales line and all the other 12 costs are not prorated throughout, throughout 13 the total period, so the operational margins 14 are skewed to the other side, to the other 15 way around. 16 Q. Right. Okay. So do you ever try 17 to perform a reconciliation where you say if 18 we could prorate all the costs or defer all 19 the costs here's what our financial picture 20 would look like? 21 MR. HANNAH: Objection to form. 22 A. So I would need you to ask the 23 question again. 24 Q. Sure. What I'm wondering is, do 25 you ever try to, when you look at the 171 </p>
<p>2 smoothed out prorated revenue number, do you 3 ever try to do some calculation or adjustment 4 to prorate and smooth out all of the costs to 5 give you a basis to compare costs versus 6 revenue on a prorated basis, including 7 salaries and things like that? 8 MR. HANNAH: Objection to form. 9 A. I understand your question, we 10 didn't try to do that. 11 Q. All right. Do you think that's a 12 calculation that could be done and would be 13 meaningful or do you think there are problems 14 that make it impossible to apply that method? 15 MR. HANNAH: Objection to form. 16 A. I will tell you for GAAP purposes 17 when we are looking at the GAAP revenues we 18 prorate the revenues to the dollar on a 19 monthly basis, and we accumulate it annually. 20 For GAAP purposes some of the costs are not 21 allowed to be spread once you recur them then 22 you really spent the money already although 23 the liability to the customer on a 24 subscription basis is still there. So I 25 think it would be not only it wouldn't be 172 </p>	<p>2 meaningful it would be somehow misleading to 3 somebody to look at that because this cost 4 would not be recoverable in the future. So 5 if you say the profitability is higher then 6 that might cause some skewing in the 7 understanding of the number. 8 Q. Mr. Sofer, do you, at Finjan, do 9 anything to track sales gains and losses to 10 competitors? 11 MR. HANNAH: Objection to form. 12 A. Again, I need you to repeat the 13 question. 14 Q. Sure. Repeat it or clarify? 15 A. To clarify. 16 Q. So when you have a customer and the 17 customer decides to stop using Finjan 18 products, do you track that event, do you 19 track that event, do you keep track of 20 customers that you lose over time? 21 MR. HANNAH: Objection to form. 22 A. We have a system that is tracked 23 through the sales force. I don't know if you 24 are familiar with that. All the salespeople 25 really enter into sales force the pipeline 173 </p>

Pages 170 to 173

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<p>2 and then they track the process of the sales. 3 When a sale is lost, so they enter into the 4 system that the sale was lost and what was 5 the reason. 6 Q. Have you had a chance to look at 7 some of that sales force data? 8 A. I am connected to sales force, it 9 means I have access to this information, I 10 don't do that on a day-to-day basis, but 11 these issues are, you know, through the 12 course of business, so when there is certain 13 case that I need to look at, of course, I'm 14 looking to the detail. 15 Q. And have you had occasion to look 16 at sales force to try to determine for what 17 reasons Finjan has lost sales? 18 MR. HANNAH: Objection to form. 19 A. This is done by the entire 20 management on I would say regular meetings to 21 understand what happens, why do we lose, 22 where do we lose, etc. 23 Q. Do you put that written analysis in 24 written form anywhere? 25 MR. HANNAH: Objection to form.</p> <p style="text-align: right;">174</p>	<p>2 A. I remember it was through 3 discussion, I didn't see analysis in a 4 written form. I don't know, it might exist 5 within the company. 6 Q. A never used salesforce.com. 7 Can you describe for me what the 8 interface looks like when you use it? 9 MR. HANNAH: Objection, objection 10 to form. 11 A. Sales force is really a tool for 12 managing sales. It enables every salesperson 13 once there is an opportunity or, you know, 14 they start a process with the customer to 15 open an opportunity within the system to put 16 in the customer details, to put in what they 17 believe is the potential revenues and then 18 document the process within that sales cycle. 19 Q. Okay. And when you, as a manager, 20 go and look at salesforce.com, what do you 21 see when you look at the screen? 22 MR. HANNAH: Objection to form. 23 A. It varies really, so depends what I 24 want to see. 25 Q. Okay. Is there an initial screen</p> <p style="text-align: right;">175</p>
<p>2 that you always see when you first go to 3 salesforce.com? 4 A. It's the screen changes from one 5 person to another, so you could really modify 6 the screen to -- 7 Q. I see. So do you have a screen 8 that you use when you first go to 9 salesforce.com? 10 MR. HANNAH: Objection to form. 11 A. Yeah, I'm not a user -- I mean, I'm 12 not a sales guy that is using the sales 13 force. But as a manager in the company I 14 have access to the sales force, so usually 15 what I do is I enter the screen which has the 16 global information for the entire company, 17 and then I could scroll down and look at 18 specific opportunities or anything that I 19 want to see. 20 Q. Okay. Is that screen organized 21 like a grid or spreadsheet or how is it 22 organized? 23 A. I define it as -- 24 MR. HANNAH: Objection to form. 25 Thanks.</p> <p style="text-align: right;">176</p>	<p>2 A. So you, you know, if I'm looking at 3 what, you know, entering the screen so it 4 has, you know, you need to put in password, 5 I'm using the finance password and then you 6 get into a screen where it defines reports or 7 you could enter as a salesperson, etc. I 8 usually go to the screen of the reports and 9 there you could see it's something similar to 10 an Excel format. 11 Q. Okay. Is there a report you can 12 ask for which is a report of all of the 13 Finjan information on all of salesforce.com? 14 MR. HANNAH: Objection to form. 15 A. I don't know. I believe it's 16 possible. 17 Q. Is there a report you find useful 18 for your purposes typically that you ask for? 19 MR. HANNAH: Objection to form. 20 A. Yes. 21 Q. What is that? 22 A. Usually I look at a quarterly 23 funnel report. 24 Q. Quarterly what report? 25 A. The funnel report.</p> <p style="text-align: right;">177</p>

Pages 174 to 177

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<p>2 Q. Funnel?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And the funnel is the funnel</p> <p>5 of business from initial contact to</p> <p>6 conversion?</p> <p>7 MR. HANNAH: Objection to form.</p> <p>8 A. When I look at report there are</p> <p>9 definitions of the stages of the sale.</p> <p>10 Q. Is "funnel" a term on</p> <p>11 salesforce.com or are you using a more</p> <p>12 business term for funnel?</p> <p>13 A. It's the general business term.</p> <p>14 Q. In your experience have the</p> <p>15 salespeople been good about entering</p> <p>16 information so you can get good current</p> <p>17 information when you look at salesforce.com?</p> <p>18 MR. HANNAH: Objection to form.</p> <p>19 A. When you say the "salespeople,"</p> <p>20 what are you referring to?</p> <p>21 Q. Let me make sure I understand.</p> <p>22 Who is it at Finjan who enters</p> <p>23 information into salesforce.com?</p> <p>24 A. Okay. The access to salesforce.com</p> <p>25 is granted to all the salespeople in Finjan,</p> <p style="text-align: right;">178</p>	<p>2 there are some that are more, I would say</p> <p>3 accurate in entering the information on a</p> <p>4 daily basis, and there are some that need to</p> <p>5 be pushed to put the information in.</p> <p>6 Q. They are human?</p> <p>7 A. Yeah.</p> <p>8 Q. I'm not shocked by what I'm</p> <p>9 hearing. All right.</p> <p>10 Can you make any generalization</p> <p>11 about the U.S. sales force, are they better</p> <p>12 or worse than outside the U.S. about keeping</p> <p>13 the information current in salesforce.com?</p> <p>14 MR. HANNAH: Objection to form.</p> <p>15 A. When you look at the U.S. sales</p> <p>16 form -- sales force you know there is a lot</p> <p>17 of people that are coming in and leaving so I</p> <p>18 don't really know what is the current</p> <p>19 situation.</p> <p>20 Q. Okay. Other than what you've just</p> <p>21 told me about salesforce.com and management</p> <p>22 discussions, is there any way that Finjan</p> <p>23 tries to analyze the reasons that it has lost</p> <p>24 or gained a particular sale?</p> <p>25 MR. HANNAH: Objection to form.</p> <p style="text-align: right;">179</p>
<p>2 A. So I need you to repeat the</p> <p>3 question.</p> <p>4 Q. Yeah. You told me about</p> <p>5 salesforce.com just now?</p> <p>6 A. Yes.</p> <p>7 Q. And you told me about some</p> <p>8 management discussions.</p> <p>9 Are there any other ways you try at</p> <p>10 Finjan to determine when you lose a sale or</p> <p>11 when you gain a sale why it was that you lost</p> <p>12 or gained that sale?</p> <p>13 MR. HANNAH: Objection to form.</p> <p>14 A. So other than what I said I'm not</p> <p>15 familiar with other ways.</p> <p>16 Q. Do you know if Finjan has lost any</p> <p>17 deals specifically to Secure Computing?</p> <p>18 MR. HANNAH: Objection to form.</p> <p>19 A. When you ask "any deals," what are</p> <p>20 you referring, which period?</p> <p>21 Q. I want to ask the broadest question</p> <p>22 first.</p> <p>23 Are you aware of any deal where</p> <p>24 Finjan and Secure Computing were competing</p> <p>25 for the deal and Secure Computing got the</p> <p style="text-align: right;">180</p>	<p>2 deal?</p> <p>3 MR. HANNAH: Objection to form.</p> <p>4 A. I don't remember specific deals,</p> <p>5 but I know that there were situation where we</p> <p>6 were competing with each other.</p> <p>7 Q. Can you identify those situations</p> <p>8 in any way, by the customer or otherwise?</p> <p>9 MR. HANNAH: Objection to form.</p> <p>10 A. I don't recall this information</p> <p>11 because I'm not involved in the analysis of</p> <p>12 that, but I believe that when</p> <p>13 Secure Computing and Finjan or Finjan with</p> <p>14 any other competitor are competing, the</p> <p>15 salespeople enter who is the competitor. We</p> <p>16 don't always know who is the competitor so</p> <p>17 it's limited to, you know, the best of our</p> <p>18 knowledge.</p> <p>19 Q. What other competitors are you</p> <p>20 aware of who have competed with Finjan for</p> <p>21 sales other than Secure Computing?</p> <p>22 MR. HANNAH: Objection to form.</p> <p>23 A. I'm not really involved in that</p> <p>24 process. What I'm hearing, you know, in</p> <p>25 meetings, etc., I heard of Blue Coat, I heard</p> <p style="text-align: right;">181</p>

Pages 178 to 181

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<p>2 of Secure Computing, I think there were a few 3 others, but I don't recall the other names, 4 but I think Blue Coat was the major other one 5 that I recall that was mentioned. 6 Q. Okay. Is it, is it part of your 7 job at Finjan at all to look at analyst 8 reports like IDC or Gartner? 9 A. No. 10 Q. Does anyone report to you who is 11 not in the financial group? 12 A. So again, we need to define what is 13 the "financial group." 14 Q. It's a circular question. 15 Does anyone report to you who has a 16 sales role? 17 A. No. 18 Q. Does anyone report to you who has a 19 business development role? 20 A. No. 21 Q. Does anyone report to you who has a 22 research and development role? 23 A. No. 24 MR. HOLDREITH: It's about ten 25 after three, I'm going to get organized,</p> <p style="text-align: right;">182</p>	<p>2 I will get you out of here by 3:30 3 today. Just give me five minutes to 4 figure out what questions I have. We'll 5 take a break. 6 MR. VIDEOGRAPHER: 3:11. Off the 7 record. 8 (Recess taken.) 9 MR. VIDEOGRAPHER: 3:20. On the 10 record. 11 Q. Mr. Sofer, are you aware of a 12 person named Mashe, M-A-S-H-E, Rubin? 13 A. Again, I need you to say it again. 14 Q. The name is Mashe. It's -- I'm not 15 sure how to pronounce it. The first name is 16 spelled M-A-S-H-E, and the last name is 17 Rubin, R-U-B-I-N? 18 A. No, it's the first time I hear the 19 name. 20 Q. All right. I'm going to be asking 21 Mr. Hannah for some documents and so I just 22 want to understand what documents exist at 23 Finjan. I'm going to be a little bit 24 repetitive here now. 25 Does Finjan have documents that</p> <p style="text-align: right;">183</p>
<p>2 establish the day it first sold the product? 3 MR. HANNAH: Objection to form. 4 A. I don't know. It will require 5 going to archive, you are speaking of ten 6 years ago. 7 Q. Who would you ask to try to find 8 that document? 9 A. I think it will be the people that 10 report to me, the financial folks because you 11 are speaking of revenues that were generated 12 by Finjan. 13 Q. Do you know if you save records of 14 invoices going back ten years at Finjan? 15 A. I don't know. 16 Q. Does Finjan have information that 17 would show the invoice sales of appliances 18 separate from subscriptions by month? 19 MR. HANNAH: Objection to form. 20 A. I will need to understand the 21 question again. 22 Q. Sure. Could you find data that 23 would show for each month the invoice sales 24 of appliances? 25 MR. HANNAH: Objection to form.</p> <p style="text-align: right;">184</p>	<p>2 A. Again, the invoice sales is 3 information that is in the accounting system. 4 The breakdown what two line items it depend 5 because you are speaking here for a very 6 broad period, so you need to look at it. 7 Q. At least for some period does 8 information exist that shows invoice sales of 9 appliances separate from subscriptions by 10 month? 11 MR. HANNAH: Objection to form. 12 A. So when you say "separate from 13 subscriptions," what do you mean? 14 Q. Can you, can you find out what the 15 prices that was invoiced for the appliance 16 separately that was invoiced for the 17 subscription? 18 MR. HANNAH: Objection to form. 19 A. So we don't have a line item that 20 is called "subscription." 21 So what are you referring to? 22 Q. That may be the answer to my 23 question. What I'm wondering is if you 24 anywhere separately allocate some portion of 25 the revenue to the appliance and some portion</p> <p style="text-align: right;">185</p>

Pages 182 to 185

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<p>2 of the revenue to the subscription?</p> <p>3 A. Okay. So there is the books and</p> <p>4 the software, so this is a detail in the</p> <p>5 accounting system, I don't know if it could</p> <p>6 be retrieved because for management purposes</p> <p>7 we are not issuing these reports so that</p> <p>8 might require a lot of work.</p> <p>9 Q. Okay. At the time of the sale is</p> <p>10 there a line on the invoice for the appliance</p> <p>11 separate from the line item for the</p> <p>12 subscription?</p> <p>13 MR. HANNAH: Objection to form.</p> <p>14 A. Yes.</p> <p>15 Q. And do you keep copies of invoices?</p> <p>16 A. The invoices are kept as part of</p> <p>17 the accounting system.</p> <p>18 Q. And are they kept in an aggregated</p> <p>19 form in a spreadsheet somewhere?</p> <p>20 MR. HANNAH: Objection to form.</p> <p>21 A. I don't know.</p> <p>22 Q. Do the invoices at the time of sale</p> <p>23 include a separate line item for maintenance</p> <p>24 if the customers purchase maintenance?</p> <p>25 A. I have to think. If we are looking</p> <p style="text-align: right;">186</p>	<p>2 at a typical invoice it would include, it</p> <p>3 would be included in a separate line item.</p> <p>4 It could be that in some cases we would</p> <p>5 prefer to aggregate all of that just to put</p> <p>6 it in one line item, so we would not be able</p> <p>7 to separate in that case.</p> <p>8 Q. Do you have in your files budgets</p> <p>9 for any years from 2000 to present?</p> <p>10 MR. HANNAH: Objection to form.</p> <p>11 A. Again, when you are looking at</p> <p>12 that, what are you referring to budgets?</p> <p>13 Q. Any budgets.</p> <p>14 MR. HANNAH: Objection to form.</p> <p>15 A. The answer is that for 2007 we have</p> <p>16 the budgets going back, we will need to</p> <p>17 check.</p> <p>18 Q. All right. Do you have a breakdown</p> <p>19 of the line items that make up R and D</p> <p>20 expenses by year?</p> <p>21 MR. HANNAH: Objection to form.</p> <p>22 A. Again, what are you referring to by</p> <p>23 "breakdown"?</p> <p>24 Q. Do you have line items that are</p> <p>25 aggregated to make up R and D expense?</p> <p style="text-align: right;">187</p>
<p>2 MR. HANNAH: Objection to form.</p> <p>3 A. So you are asking me before</p> <p>4 regarding the breakdown of line items,</p> <p>5 believe to the extent of, you know, the main</p> <p>6 items there should be the breakdown. If you</p> <p>7 are referring to historical amounts, I'm not</p> <p>8 sure we are archiving the whole information</p> <p>9 going back ten years. So I could only</p> <p>10 testify on, you know, what I know which is</p> <p>11 2007 there is the breakdown.</p> <p>12 Q. There may be a breakdown for before</p> <p>13 2007, but you don't know?</p> <p>14 A. Yes.</p> <p>15 Q. Is there a breakdown of line items</p> <p>16 that make up selling and marketing expense</p> <p>17 for 2007?</p> <p>18 A. Yes.</p> <p>19 Q. And do you know whether there's a</p> <p>20 breakdown of line items that make up selling</p> <p>21 and marketing expense prior to 2007?</p> <p>22 MR. HANNAH: Objection to form.</p> <p>23 A. I don't know.</p> <p>24 Q. Is it possible?</p> <p>25 A. Yes.</p> <p style="text-align: right;">188</p>	<p>2 Q. Same answer for general and</p> <p>3 administrative expense?</p> <p>4 A. Yes.</p> <p>5 Q. Have you seen any documents today</p> <p>6 that break down any of the expenses?</p> <p>7 MR. HANNAH: Objection to form.</p> <p>8 A. To the extent of breakdown for 2007</p> <p>9 quarterly report since I was present so we</p> <p>10 have these breakdown because this is part of</p> <p>11 the quarterly financial report. Prior to</p> <p>12 that I have no idea.</p> <p>13 Q. Today, here at the deposition, have</p> <p>14 you seen any documents that break down</p> <p>15 expenses?</p> <p>16 MR. HANNAH: Objection to form.</p> <p>17 A. We have the financial reports which</p> <p>18 shows the expenses and we can look in the</p> <p>19 note, there isn't a full breakdown but you</p> <p>20 have some referred to what some of the</p> <p>21 expenses comprised of, so it's not a full</p> <p>22 breakdown.</p> <p>23 Q. Other than what's in those notes</p> <p>24 have you seen any breakdown of expenses at</p> <p>25 the deposition today?</p> <p style="text-align: right;">189</p>

Pages 186 to 189

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<p>2 MR. HANNAH: Objection to form.</p> <p>3 A. You mean documents that were</p> <p>4 presented to me?</p> <p>5 Q. Right.</p> <p>6 A. I don't remember. A lot of</p> <p>7 documents were presented. In the financial</p> <p>8 statements there is some extent the</p> <p>9 breakdown. 1997 it's not a breakdown but</p> <p>10 it's high level. The board meeting</p> <p>11 presentation you gave me for Q-4 1994 I</p> <p>12 didn't go through it, so I want to go through</p> <p>13 it right now.</p> <p>14 Q. I think I can go through it and</p> <p>15 verify for myself. I don't see any breakdown</p> <p>16 there.</p> <p>17 A. The other documents there weren't</p> <p>18 any.</p> <p>19 Q. Have you seen any budgets at the</p> <p>20 deposition today?</p> <p>21 A. The financial statements do not, of</p> <p>22 course, include budgets. Here you presented</p> <p>23 to me a 1997 consolidated projection versus</p> <p>24 actual, I don't know if that means budget.</p> <p>25 So that's the only budget that you showed me.</p> <p style="text-align: right;">190</p>	<p>2 The others I don't know, I didn't see budget</p> <p>3 but probably if the board meeting</p> <p>4 presentation, again, there is some referral</p> <p>5 to -- I don't see the word "budget" here.</p> <p>6 Q. And the board meeting presentation</p> <p>7 is the 1997 presentation --</p> <p>8 A. Yeah.</p> <p>9 Q. -- Exhibit 1048?</p> <p>10 A. There was the word "forecast"</p> <p>11 maybe, maybe ten years ago they called it</p> <p>12 "forecast."</p> <p>13 (Jurat contained on next page.)</p> <p style="text-align: right;">191</p>
<p>2 MR. HOLDREITH: All right. Subject</p> <p>3 to the objections I've made on the</p> <p>4 record today about information that we'd</p> <p>5 like and don't think we have, I'm</p> <p>6 finished with my questions for you</p> <p>7 today. I appreciate your time,</p> <p>8 Mr. Sofer.</p> <p>9 A. Thank you.</p> <p>10 MR. VIDEOGRAPHER: Here marks the</p> <p>11 end of the deposition of Mr. Sofer. The</p> <p>12 time is 3:29 p.m., end of tape two.</p> <p>13</p> <p>14 -o0o-</p> <p>15 (Whereupon, the deposition of EZRA</p> <p>16 SOFER was concluded at 3:29 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">192</p>	<p>1</p> <p>2 CERTIFICATE</p> <p>3 STATE OF NEW YORK)</p> <p>4 : ss.</p> <p>5 COUNTY OF NEW YORK)</p> <p>6</p> <p>7 I, Toni Allegrucci, a Notary Public</p> <p>8 within and for the State of New York, do</p> <p>9 hereby certify:</p> <p>10 That EZRA SOFER, the witness whose</p> <p>11 deposition is hereinbefore set forth,</p> <p>12 was duly sworn by me and that such</p> <p>13 deposition is a true record of the</p> <p>14 testimony given by the witness.</p> <p>15 I further certify that I am not</p> <p>16 related to any of the parties to this</p> <p>17 action by blood or marriage, and that I</p> <p>18 am in no way interested in the outcome</p> <p>19 of this matter.</p> <p>20 IN WITNESS WHEREOF, I have hereunto</p> <p>21 set my hand this 17th day of October,</p> <p>22 2007.</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">193</p>

Pages 190 to 193

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<p>1 2 ----- I N D E X ----- 3 WITNESS EXAMINATION BY PAGE 4 EZRA SOFER MR. HOLDREITH 5 5 ----- INFORMATION REQUESTS ----- 6 DIRECTIONS: 7 RULINGS: 8 TO BE FURNISHED: 9 REQUESTS: 10 MOTIONS: 11 ----- EXHIBITS ----- 12 EXHIBIT DESCRIPTION FOR ID. 13 Exhibit 1034 Document 102 14 Exhibit 1035 Document 110 15 Exhibit 1036 Document 110 16 Exhibit 1037 Document 110 17 Exhibit 1038 Document 110 18 Exhibit 1039 Document 110 19 Exhibit 1040 Document 110 20 Exhibit 1041 Document 110 21 Exhibit 1042 Document 110 22 Exhibit 1043 Document 123 23 Exhibit 1044 Document 136 24 25</p>	<p>1 2 ----- E X H I B I T S ----- 3 EXHIBIT DESCRIPTION FOR ID. 4 Exhibit 1045 Document 132 5 Exhibit 1046 Document 146 6 Exhibit 1047 Document 148 7 Exhibit 1048 Document 150 8 Exhibit 1049 Document 161 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
194	195

Pages 194 to 195

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Ezra Sofer
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Page 1

A				
abbreviation 117:10 ability 27:14 169:8 able 21:3 47:2 84:8,9 121:9 125:10 146:9 146:11 148:6 159:2 167:11 169:12 187:6 abovementioned 100:9,19 accept 126:15 access 23:20,24 40:13 174:9 176:14 178:24 accessible 42:9 accommodate 6:15 accomplish 168:16 accomplishing 168:15 account 69:19 76:7 accounting 12:8 14:24 19:16 20:7,11,16,19 21:22,24 22:9,14,18 23:6,9,14,20,25 34:25 35:11,12,14 35:18 36:16,17 37:8 70:11 75:11 92:17 104:15,18 106:17,22 106:24 107:3 148:7 156:20 185:3 186:5 186:17 accrual 62:19 accrue 62:24 accumulate 172:19 accumulated 65:11,14 65:20,23,25 66:2 169:2 accumulative 66:5 accuracy 129:2 accurate 40:15 46:13 57:7 103:2,4 119:6,9 135:11 179:3 accused 101:21 acquire 59:14 action 1:4 193:17 active 18:23 19:2,9 activities 47:19 76:11 78:23 actual 62:17 70:6 154:8,9 162:18,24 163:16,23 164:4 190:24 add 58:11 adding 74:2 addition 11:11,16 additional 66:20 adequate 158:10 adjust 115:21	adjustment 172:3 admin 12:9 administrative 72:21 73:2 75:3,15,21 76:3 76:9,17,23 189:3 ag 1:10 aggregate 57:24 118:24 187:5 aggregated 75:4 186:18 187:25 ago 13:25 152:9 155:15 161:22 184:6 191:11 agree 85:3,8 108:8 124:13 170:21 agreement 49:16 64:11 66:24 93:3,8 94:15 agreements 47:6 145:8 145:12,23 156:21 ahead 5:20 6:14 20:9 21:10 23:18 34:22 38:11 44:13 47:11 82:9 101:6 109:10 116:22 127:3,10 153:3 allegation 99:24 alleging 99:21 allegretti 1:24 2:11 193:7,24 allocate 137:16,20,22 138:3 185:24 allowed 172:21 amdocs 7:3,6,7,7,8,9 7:11 8:3 america 7:4 amount 47:2 49:10 69:24 80:15 84:18 84:24 90:13 92:8 120:17,22 122:15 131:3 137:12 amounts 33:23 115:21 119:13 120:13 131:10 168:2 188:7 analysis 156:9 174:23 175:3 181:11 analyst 182:7 analyze 179:23 annual 49:20 83:7 115:6 annually 130:23 172:19 answer 5:21 6:2,4,6,16 16:8 34:2 41:17,19 44:10,11 47:20 88:8 101:5,6 109:9,10	110:10 118:15 119:23 122:25 124:11 125:3,6 130:6 139:7 185:22 187:15 189:2 answered 44:12 159:22 answering 58:14 anticipate 5:19 antivirus 68:7 71:17 91:9 anybody 21:16,17 90:23 anymore 72:25 74:20 apart 90:4 apologize 61:5 144:11 165:5 appear 127:8,13 appearing 126:19 appears 32:3 63:16 appliance 28:19 31:6 31:18,20 32:2,4,7,20 49:6,7 121:2,15 132:13 135:17 137:24 138:21 150:7 185:15,25 186:10 appliances 28:2,2 30:4 30:5,10,14,17,19 31:2,12 32:10 58:24 59:2,14 67:13 68:7 68:22,24 69:4,10 70:16,22,25 71:2,7,9 71:12 97:7,18,20 98:6,20 117:16 118:25 120:18,23 121:10,24 131:21 132:2 137:22 138:13 184:17,24 185:9 apply 172:14 appoint 123:12 appointed 123:22 124:2 appreciate 5:25 112:17 159:13 192:7 approached 7:18 archive 27:6 155:6 184:5 archived 44:18 156:18 archives 136:23 archiving 44:22 188:8 area 8:6 arp 28:24 arrival 33:5,20 articles 169:10 asher 7:16	asked 14:14 39:18 40:4 62:14 101:7 120:6 123:14 138:2 146:7 165:5 171:7 asking 29:23 38:5 41:17 43:25 44:11 44:14,22 55:11 58:12 60:3 75:25 91:16 97:25 101:10 106:13 121:8 122:6 134:23 142:24 148:23 162:9 164:25 183:20 188:3 assets 58:6,19 assigned 143:20 assistant 11:22 14:21 14:21 assume 136:14 attachment 137:5 attention 167:9 attorney 5:13 attorneyclient 41:13 101:4 109:8 123:2 attorneys 1:16 2:6 3:5 3:11 21:7 54:14 109:24 attributable 66:23 attributes 110:12 audit 16:12 17:8 103:9 129:6,20 130:14,18 130:22 audited 16:24 17:5 100:23 111:13,20 112:4,25 113:9 114:3 115:13 122:4 125:17 130:8,10,13 136:9 163:12 165:15 165:20 167:12 auditing 16:6,15 auditors 16:12 76:7 103:9 128:25 129:11 130:14,18,22 142:5 available 32:5 39:2 40:22 84:4 157:11 avenue 3:13 aware 15:7,10 22:12 24:6 28:7 33:2 46:24 47:5 90:14,20 99:3 99:24 103:5,8 109:20 123:21,25 125:8 180:23 181:20 183:11	48:2 69:12 77:5 124:21 138:10 142:17 144:20 167:12 184:14 187:16 188:9 backs 104:11 backup 45:2 104:6,8 104:10,19 bad 170:6 bag 102:10 balance 26:15 57:13 57:21 65:11 69:13 base 34:5 64:10 118:7 169:22 based 7:25 8:2,5 63:13 63:19 68:13,16 71:4 79:11,13 86:25 87:8 109:21 126:12 129:5 basic 57:17 65:17 70:4 115:25 basics 60:4 basis 48:15 49:21 57:8 59:5,6,13 64:17 69:10 79:8,10 86:20 87:5 100:15 103:19 109:4,12 111:15,22 112:6 113:3,11 121:9 126:16 151:11 155:4 163:14,23 167:16 169:2,3,9,22 170:3,8,8 172:5,6,19 172:24 174:10 179:4 bates 54:10,21 112:10 began 120:24 beginning 64:20 111:4 begins 4:2 behalf 4:15 belabor 148:3 belief 109:13 believe 17:3,9 27:8 28:15 33:22 41:17 44:10 45:12 55:24 62:16,24 70:10 72:17 74:6 88:10 92:19 100:8,18 101:22 102:25 104:11 108:2,23 136:22 138:5 139:7 139:25 142:5 147:23 149:14 155:5 157:15 158:8,25 160:18 162:7 164:13 166:18 175:17 177:15 181:12 188:5 believes 109:25 110:5

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Page 2

benchmark 18:4,9 benitzhaks 54:5 bessimer 18:16 best 104:20 111:16,23 112:7 113:4,12,19 114:2 122:14 131:2 131:9 144:10 181:17 better 26:10 179:11 big 44:16 98:13 169:6 bigger 86:9 138:22 bill 159:19 billing 7:10,13 bit 183:23 blood 193:17 blue 181:25 182:4 board 12:24 14:7 150:17,24 151:8,14 151:16,22,25 152:8 152:13,23 153:4,5,8 153:9 154:3,6 155:7 155:17,18,23 156:2 156:17 160:5 162:22 164:7,10,11,13,17 167:10 190:10 191:3 191:6 boards 10:17 bold 134:7 book 48:4,9 booking 167:25 169:5 169:7,16,19 bookings 87:8 163:19 books 20:2 119:12,15 186:3 bottom 54:13 65:10,10 93:2 95:9,11 99:16 box 138:22,25 139:2 140:20 141:7 142:11 142:15 boxes 138:18,25 139:6 139:16 break 6:12,13,17,18 25:15 38:25 39:7,17 76:15,21 77:5 79:23 82:8,10 92:8 110:15 124:9,14 144:23 157:20 158:6,12 183:5 189:6,14 breakdown 30:21 75:16,17,18 77:2,3 87:15,20 106:17 117:23 185:4 187:18 187:23 188:4,6,11 188:12,15,20 189:8 189:10,19,22,24 190:9,9,15	brin 12:21,23 13:13,15 bring 167:9 broad 152:7 185:6 broadest 135:21 180:21 brochure 78:24 broken 50:13 72:7 75:22 116:18 118:4 118:6 budget 82:23 83:2,4 83:12,18 84:10,16 84:23 86:8,12 87:3,6 87:7,9 88:3,5,9 154:8,9,10,13,16,23 155:3 160:3,5,10,13 160:16,19 162:24 163:16,17,23 164:4 169:16 190:24,25 191:2,5 budgeted 84:17 86:11 budgeting 83:7,9 159:25 budgets 82:17,19 83:21,23 87:22 146:9 156:18 160:12 160:23 161:4 187:8 187:12,13,16 190:19 190:22 building 8:13,14,17 9:5,5,8,14,15 business 7:8 16:20 34:4 39:25 41:2 62:13 149:22 157:7 174:12 178:5,12,13 182:19 buy 34:17 138:12	109:7 cancelling 150:11 cant 6:6 21:15,16 23:3 133:25 146:20 170:25 capacity 11:21 73:17 74:15 160:21 capital 18:20 care 122:6 141:17 careful 102:11 167:10 case 21:13 40:3 41:5 42:19 52:19 77:20 93:12 96:16 101:20 104:15 117:11 134:2 167:14 174:13 187:7 cases 98:16,18 187:4 cash 32:24 62:20 64:18,19,23 94:18 categories 71:24 72:8 74:22 153:21 cause 173:6 caution 101:3 124:25 cautionary 125:14 caveat 89:15 128:23 center 105:16,20,24 106:11 157:7 ceo 7:17 88:7 156:11 certain 76:2 115:17 120:9 170:5 174:12 certainly 156:17 157:16 159:10 certify 193:9,15 cfo 6:21 11:3,9,10 65:2 100:15 101:9,10 168:14 chance 104:21 148:16 158:19 174:6 change 73:11,14 81:3 129:5,15,21 170:10 changed 34:4 130:2 changes 10:3 47:5 81:5 144:20 153:24 176:4 charged 142:6 charges 139:25 charging 142:24 chart 116:4 check 187:17 chief 11:3 chosen 16:23 chrysler 8:13,14,17 9:5,8,14,15 circular 182:14 circulates 114:23 ciresi 3:10 4:25	cisco 18:5,14,19 145:8 145:11,13,16,24 city 8:9,14 18:12 civil 1:4 claim 99:17 102:2,3 108:2,4,11,17,23 109:14 110:5,5 clarification 91:16 clarify 34:9 57:18 173:14,15 clarifying 62:22 clear 6:7 35:15 51:2 91:12 client 124:10 close 84:10 closed 96:12 closer 144:15 coat 181:25 182:4 code 105:15,20,23 106:11 107:2 144:19 coie 3:4 4:22 collected 158:9 column 116:14 118:12 134:7 147:9 162:6 columns 163:22 com 175:6,20 176:3,9 177:13 178:11,17,23 178:24 179:13,21 180:5 combination 104:4 come 7:14 32:23 122:22 comes 32:18 37:9 coming 179:17 comma 78:2 comment 155:13 commercial 47:4 commission 79:3 80:9 81:3 commissions 78:15 79:9,13,15,24 80:3 80:13,16,22 81:7,13 81:20,22 committee 17:8 communicate 124:10 communication 41:14 101:4 109:8 123:2 communications 125:4,5 commute 9:9 companies 7:10,11,13 10:18 15:14,19,23 17:14 18:20 20:20 20:21 54:24 56:4 57:25 91:20 92:22	company 7:5,9,20,23 11:6 12:11 14:4,5 15:4,5,8,11,16,17 16:21 17:2,3 18:3 19:21 21:10 22:16 22:25 23:3 24:23 28:16,23 30:15,20 30:23 32:19,24 33:6 33:16,20 34:3,7 35:4 40:18 43:2 44:24,25 45:11 50:15,21 52:16 55:4,6,9,16,17 55:18,20,22 56:8,13 56:19 57:3,9 62:2,14 64:16 66:2,6 74:16 76:12 85:23 86:6 90:16,20,22 93:21 94:4,8,11,14,19 95:8 95:20 96:16 97:7,12 97:17,18 98:24 99:20 100:7,16,17 100:22,24 101:7,13 104:23 107:15 108:2 108:22 109:23 120:24 125:18 129:2 130:20 136:4 138:7 139:10 141:20 143:22 144:12 152:11 153:6,14 155:11 156:8 168:8 168:22 169:5,8,12 169:14 175:20,21 175:5 176:13,16 companys 94:24 95:11 95:16 97:5 122:23 compare 155:2 160:17 167:21 170:24 172:5 compared 163:18 compares 162:17 163:15 comparison 154:10,12 154:15 163:3 167:8 comparisons 154:23 competed 181:20 competing 180:24 181:6,14 competitor 181:14,15 181:16 competitors 173:10 181:19 complication 144:18 components 68:18 comprehensive 33:15 35:7 compressed 118:3
---	--	--	---	---

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Page 3

<p>comprised 189:21 computer 20:4 23:22 26:22 27:4 37:3 152:17 computing 1:9 4:5 5:14 180:17,24,25 181:13,21 182:2 computings 108:3 109:14 conceding 158:8 conclude 6:3 concluded 192:16 confer 158:19 confidence 21:18 confidential 1:16 2:6 21:7,15 confusing 166:22 connected 174:8 consecutive 112:11 consequence 128:24 consider 157:14,19 158:6 consideration 94:14 considerations 129:20 considering 118:11 considers 131:25 consolidated 36:6 54:7 54:17 57:8,11,13,21 66:11,13 77:7 102:22 111:6,10,15 111:18,22 112:2,6 112:22 113:3,7,11 113:15,17,24 114:11 114:17 127:13,17 161:10 190:23 consult 165:15 consulted 160:11 contact 178:5 contain 24:21 43:4 152:25 153:13 contained 24:15 29:24 106:14 152:22 191:13 containing 76:2 contains 30:3 contd 110:22 continue 42:17 control 57:14 controlled 29:8 controller 11:22 12:7 12:18,19,24 14:3,18 14:20,23 45:12,15 controllers 14:17 conversation 5:19 conversion 178:6</p>	<p>convince 14:9 coordinator 12:13 copies 26:20 42:12,16 45:13 111:7 146:4,8 152:4 155:6 163:7 186:15 copy 27:3,6,11 42:11 44:18,19 45:15,22 54:5,16 84:22 102:5 102:8,9,14,21 111:13,20,24 112:4 112:8,10,20,25 113:5,9,13,17,20,24 114:5 123:10 132:18 137:4 150:16 151:24 152:8 copying 112:17 corporate 15:8 corporation 1:5,9,10 1:10,10,11 correct 9:23 10:20 58:8 66:4 81:6 93:20 95:9 97:13 104:22 105:6,12 119:19,20 120:2,12 131:8 167:17 correctly 35:21 43:11 46:14 correlation 167:18 correspondence 43:5 43:6 corresponding 166:14 cost 59:6,13,22 60:6 60:10 67:6,11,13,14 67:14 68:12 69:12 69:17 70:6,15,18,21 70:22 71:4 73:10 74:8,9 76:6 92:3,5 103:23 104:3 140:4 140:14,19,25 141:3 141:12,19,21 143:3 156:19 157:2 171:9 171:11 173:3 costs 36:15,17 37:6 38:13 67:9,22 69:14 69:15,20,24 70:5,14 71:5,6,12,21 73:13 75:4,6,14,21 76:5,10 89:20,23 105:16 106:2,6,12,18 137:16,20,23 142:18 154:13,18 170:24,25 171:8,12,18,19 172:4,5,20 couldn't 147:25</p>	<p>counsel 4:18 21:12 38:20 40:4,7,17 41:14,17 42:20 44:8 83:20 112:16 145:20 146:14 156:12 158:18 count 162:7 counterclaimants 1:12 3:11 counterdefendant 1:6 3:5 county 193:5 course 38:21 39:24 41:2 62:13 85:21 139:8 149:21 152:9 152:10,14 158:7 174:12,13 190:22 court 1:2 4:6 5:3,16 21:13 cover 157:22 covered 131:22 132:3 covering 67:12 create 45:12 170:11 created 60:24 credit 149:6,10,14,14 149:15,18,20 150:2 150:5,9,10 currency 95:7 current 40:5 41:15 44:9 58:6,19 62:7,12 63:5 72:24 73:25 74:9 88:7 123:17 124:3 125:11,24 156:18 160:13 162:25 178:16 179:13,18 currently 10:9 11:2 12:14,18 22:3 27:22 39:19 62:3 67:25 90:17 99:2,3 163:2 customer 9:20 46:15 46:20 47:15,17 63:13 64:5,14 71:16 97:18 98:2,5,7,13,19 98:21 143:20 144:3 144:6 150:6,12 172:23 173:16,17 175:14,16 181:8 customers 11:17 31:11 31:17 52:9 65:4 78:25 96:17,23,25 142:19,25 143:4 144:15 173:20 186:24 cutoff 86:21</p>	<p>cyberguard 1:10 cycle 175:18</p> <p style="text-align: center;">D</p> <p>daily 179:4 data 19:18 21:21,23 23:7,14,21 24:2 26:4 28:18 29:13,15 30:7 35:4,6,9,10,12 44:24 153:21 156:19,19 157:4,21 174:7 184:22 database 21:4 date 4:7 102:13 111:2 123:9,19 124:5 126:3 132:17 134:21 135:6,9 136:16,19 137:2 146:23 148:20 150:15 155:4,7 161:8 day 9:10,11 184:2 192:22 193:21 daytoday 174:10 deal 33:7 34:24 180:23 180:25 181:2 deals 96:21 180:17,19 181:4 debate 168:21 december 36:7 50:10 54:8 58:7 59:10 61:17 102:23 104:23 105:7 111:12,19 112:3,23 113:8,16 113:23 decide 43:12 45:9 168:15 decided 68:22 144:5 decides 173:17 decision 43:8 decreasing 85:10 dedesignate 21:11 defendant 3:11 defendants 1:12 5:2 defer 70:19 171:8,18 deferred 63:6,10,16 64:15 69:14,20,20 69:24 70:5,14 171:8 defers 65:7 deficit 65:11,14,20,23 65:25 define 19:24 31:15 33:12 61:14 69:3 80:9 86:13 90:7 103:4 119:8,16 122:18 126:4 160:24</p>	<p>176:23 182:12 defined 48:12 50:5 91:10 defines 177:6 defining 53:22 definition 91:12 141:19 definitions 11:13 178:9 delaware 1:3,9,10 4:6 55:6,18,22 delete 42:21 43:15 44:15 deleted 43:2,7,19 44:3 44:14,17 45:17,21 denominate 96:17 deny 124:14 department 88:11 114:21,23 141:16 151:15 departure 14:13 depend 185:4 depending 43:7 68:23 110:13 128:8 depends 26:23 86:20 98:10 170:15 175:23 deposition 1:17 2:7 4:3 4:8,15 38:22 54:5 102:16 137:11 146:16 156:25 157:3 157:5 189:13,25 190:20 192:11,15 193:11,13 depositions 156:16 158:24 deposits 32:25 derivative 154:17 derived 38:14,15 104:3,7 derives 107:2 describe 48:7 175:7 described 35:2 47:19 61:20 describes 59:19 94:3 description 48:4 54:23 134:4 194:12 195:3 designate 21:6 159:7 designated 21:14 122:21 148:17 designation 131:16 destroyed 41:10,25 detail 74:21 75:20 87:11 156:20 174:14 186:4 detailed 86:8 87:9</p>
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